This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

1911
JURIS DOCTOR CLASS
MEMORIAL
COLLECTION
ON
LEGAL
HISTORY
G. B. BUSH
C. COONAN
L. CRAVEN
R. E. FITZGERALD
H. G. HILL
J. K. HUTCHINSON
M. R. KIRKWOOD
L. M. LANEY.
P. S. LINCOLN
W. H. MASTERS
M. M. MATTHIESSEN
H. McCOWEN JR.
H. L. PRICE
R. R. RANKIN
G. N. RICHARDSON
W. C. SHELTON
W. SLACK
L. J. SMALLPAGE
W. C. THEILE
R. W. WALLACE

AB
AH4
XJm

THE MIRROUR OF JUSTICES

WRITTEN ORIGINALLY

IN THE OLD FRENCH, LONG BEFORE THE CONQUEST;
AND MANY THINGS ADDED

BY

ANDREW HORNE

TO WHICH IS ADDED

THE DIVERSITY OF COURTS AND THEIR JURISDICTION

TRANSLATED INTO ENGLISH

BY

W. H., of *Gray's Inn*, Esq.,

Jura publica certissima sunt vitæ humanæ solatia, infirmorum auxilia, impiorum fræna.—CASSIODOR.

WITH AN INTRODUCTION

BY

WILLIAM C. ROBINSON, LL.D.

WHITEFORD PROFESSOR OF LAW IN THE CATHOLIC UNIVERSITY OF AMERICA

WASHINGTON, D. C.
JOHN BYRNE & CO.
LAW PUBLISHERS AND BOOKSELLERS
1903

201575

COPYRIGHT, 1908,

BY

JOHN BYRNE & CO.

STANFORD LIBRARY

CONTENTS.

	PAGE
Introduction	ix
Translator to the reader	1
The Preamble	12
CHAP. I. Sect. 1. Of the offences against the peace	17
Of the original of the law	17
Sect. 2. Of the coming of the *English* into this realm.	18
Sect. 3. Of the first constitutions made by the ancient kings	21
Sect. 4. Of offences, and the division of them	30
Sect. 5. Of majesty	33
Sect. 6. Of falsifying	37
Sect. 7. Of treason	39
Sect. 8. Of burners	40
Sect. 9. Of manslaughter	41
Sect. 10. Of larcenies	45
Sect. 11. Of hamsockne or burglary	50
Sect. 12. Of rape	51
Sect. 13. Of the office of coroners	52
Sect. 14. Of the Exchequer	62
Sect. 15. Of inferior courts	63
Sect. 16. Of sheriffs turns	65
Sect. 17. Of views of frank pledges	66
Chap. II. Sect. 1. Of actions	73
Sect. 2. Of judges	74
Sect. 3. Of plaintiffs	75
Sect. 4. Of rewards and fees	78
Sect. 5. Of pleaders	79
Sect. 6. Of attachments	81
Sect. 7. Of appeals	83
Sect. 8. Of process of exigent	85

PAGE

Chap. II. Sect. 9. Of gaol and gaolers..... 86
Sect. 10. Of people bailable in appeals..... 88
Sect. 11. Of appeal of majesty..... 88
Sect. 12. Appeal of falsifying..... 90
Sect. 13. Of appeals of treason..... 91
Sect. 14, Of appeal of burning..... 93
Sect. 15. Of the appeal of murder..... 93
Sect. 16. Appeals of robbery and larceny 95
Sect. 17. Of the appeal of burglary..... 96
Sect. 18. Of the appeal of imprisonment..... 96
Sect. 19. Of appeals of mayhem. 97
Sect. 20. Of appeal of wounding..... 97
Sect. 21. Of appeal of rape..... 98
Sect. 22. Of offences real, at the king's suit..... 98
Sect. 23. Of offences personal at the king's suit..... 101
Sect. 24. Of venial trespasses and personal suits..... 103
Sect. 25. Of assize and novel disseisin, etc..... 106
Sect. 26. Of distresses..... 113
Sect. 27. Of contracts 118
Sect. 28. Of villenage and niefty 122
Sect. 29. Of summons..... 128
Sect. 30. Of essoins..... 130
Sect. 31. Of attornies..... 137
Chap. III. Sect. 1. Of exceptions..... 139
Sect. 2. What exception is..... 140
Sect. 3. Exceptions of dilatories..... 141
Sect. 4. Exception of clergy..... 142
Sect. 5. Replication of bigamy..... 143
Sect. 6. Exception to the power of the judge..... 144
Sect. 7. Exception to the person of the judge..... 146
Sect. 8. Exception to the time..... 146
Sect. 9. Exception to the place..... 147
Sect. 10. Exception to the person..... 148
Sect. 11. Exception of the person, and of his custody. 148
Sect. 12. Exception of summons..... 149
Sect. 13. Exception of vicious counts..... 149
Sect. 14. Exception to approvers 152
Sect. 15. Exception of indictments..... 152
Sect. 16. An answer to treason..... 154

PAGE
Chap. III. Sect. 17. Burning..... 155
Sect. 18. Of murder... 155
Sect. 19. Of robbery or larceny..... 156
Sect. 20. Of burglary..... 157
Sect. 21. Of rape..... 157
Sect. 22. Of imprisonment 158
Sect. 23. Of mayhem and wounding..... 158
Sect. 24. Juramentum duelli..... 169
Sect. 25. Ordering the combatants..... 170
Sect. 26. Personal trespass..... 171
Sect. 27. Of purprestures..... 173
Sect. 28. Of treasure found..... 173
Sect. 29. Of wrecks 173
Sect. 30, Of usury..... 174
Sect. 31. Of hunting..... 174
Sect. 32. Of obligation 175
Sect. 33. Of attaint..... 175
Sect. 34. The ordinance of attaint. 176
Sect. 35. Of oaths..... 178
Sect. 36. Of homage..... 178
Sect. 37. Fealty annexed to homage..... 179
Sect. 38. Of common oaths..... 179
Sect. 39. Of final accords..... 180
Chap. IV. Sect. 1. Of judgment..... 183
Sect. 2. The ordinances of judgment 183
Sect. 3. Jurisdiction to declare the law..... 186
Sect. 4. Defaults punishable..... 189
Sect. 5. Defaults..... 190
Sect. 6. Of personal actions..... 191
Sect. 7. Defaults in real actions..... 192
Sect. 8. Of actions mixt..... 192
Sect. 9. Of pledge and mainperner..... 193
Sect. 10. Defaults after summons..... 194
Sect. 11. Of champion..... 196
Sect. 12. Of punishments..... 199
Sect. 13. Of infamous persons..... 201
Sect. 14. Of majesty..... 202
Sect. 15. Of burning 203
Sect. 16. Of murder..... 204

PAGE

Chap. IV. Sect. 17. Of punishments 213
Sect. 18. Of false judges 214
Sect. 19. Of perjury 216
Sect. 20. Of justices in Eyre 217
Sect. 21. Of articles in Eyre 218
Sect. 22. Of franchises 221
Sect. 23. Of satisfaction of debt 222
Sect. 24. Cases of disseisin 222
Sects. 25, 26. Of amercements taxable 225
Sect. 27. Office of justices in Eyre 228
Chap. V. Sect. 1. Abusions of the law 230
Sect. 2. Defects of the great charter 257
Articles stat. Merton 265
Sect. 3. Stat. Marlbridge 267
Sect. 4. Stat. Westm. 1 269
Sect, 5. Stat. Westm. 2 275
Sect, 6. Reprehensions of circumspecte agatis 13 Edw. I 286
Sect. 7. New statute of debt 287

Diversity of Courts.

Their jurisdiction 291
Of the court of Marshalsea 292
Of the King's Bench 293
Of the Common Pleas 296
The Chancery 298
The Exchequer 301
The Cinque Ports 302
Of Court Baron 305
Appeals of murder 309
Appeal of robbery 312
Appeal of rape 318
Appeal of mayhem 319
Indictments 322

INTRODUCTION.

By WILLIAM C. ROBINSON, LL.D.,

(Whiteford Professor of Common Law in the Catholic University of America.)

ANDREW HORN, the reputed author or compiler of the Mirror of Justices, was born in London, in which city, in the year A. D. 1328, he also died. He was by occupation a fishmonger, and in this calling attained such honorable rank among his fellow-merchants that in A. D. 1320 he was elected Chamberlain of London, and held that office by annual re-election till his death. Being a man of ample means and literary tastes, and having no immediate family, he devoted his leisure to antiquarian research, and by his will bequeathed to the chamber of Guildhall a number of valuable manuscripts, among which were a compilation of the city laws and customs called the *Liber Horn*, and a book entitled *Speculum —Justiciariorum,* or *The Mirror of Justices.*

Of the latter work the oldest known copy is that preserved in the library of Corpus Christi College, Cam-

bridge, and this by some critics has been supposed to have been prepared by Horn himself, or by a clerk writing from his dictation. This copy is in the Norman French, and forms the basis of the translation made by Mr. William Joseph Whittaker and published in A. D. 1895 by the Selden Society with an introduction by Professor Frederic William Maitland. Another ancient copy furnished the text for the first printed edition of The Mirror in A. D. 1642, and from the same or possibly another copy was derived the translation published by Mr. William Hughes in A. D. 1646 and reproduced in A. D. 1768 and A. D. 1840. All these copies are more or less imperfect, and the translators have avowedly supplied missing words and letters, and given to the doubtful passages of the text such interpretations as in their judgment most nearly represented the meaning of the author. The present edition contains the translation of Hughes, and an original monograph by him on the Diversity of Courts and their Jurisdiction.

The principal questions raised by literary and legal critics concerning The Mirror relate to its origin, its character, and its authority. In reference to its *origin* an almost uniform tradition ascribes its production in its present shape to the pen of Andrew Horn. The arguments against this tradition advanced by recent writers rest upon conclusions drawn by them from the character and authority of the work, and their doubt

whether so learned and conscientious an antiquarian as Horn could have composed it. These arguments are fully set forth in the introduction by Professor Maitland to Whittaker's translation, and yet such is the force of the tradition and the inability to impute it to any other author that even he inclines to credit it to Horn, and to explain his doubts by the suggestion that it was written by Horn as early as A. D. 1290, when its author was still a young man new to legal studies, and before he had acquired the knowledge and the caution which made his later works so valuable.

Concerning the *character* of the book a wider difference of opinion has prevailed. Many critics of the highest authority have insisted that the substance of The Mirror is older than the Conquest, and that the work of Horn consisted in editing the ancient matter and adding to it the more recent laws and customs down to his own day. Others have regarded it as a literary imposture whose author mingled with his statements of the current laws of the reigns of Edward I and Edward II a multitude of groundless fabrications concerning ancient Norman and Saxon laws. Still others consider the entire work as an original composition of the reputed author, compiled from documents and traditions then accessible though not now extant, and bearing substantially the same relation to the laws of the whole kingdom that the *Liber Horn* does to the customs and ordinances of London.

The internal evidence afforded by the book itself supports this last more moderate and reasonable opinion. In the Preamble the author asserts that with the assistance of certain unnamed companions he has made a study of the laws and compiled this treatise in order to set before the judges of the courts the true doctrines of the Common Law according to the ancient and still authoritative usages, and thus enable them to avoid false judgments and correct the daily abuses of the law into which their ignorance had led them; for which reason he had called this book The Mirror of Justices. This assertion seems hardly consistent with the theory that the nucleus of the book was an older work of the Saxon period bearing the title "Speculum Justiciariorum."

Again, in the beginning of the first chapter the author classifies the whole body of the law of his time into the Canon Law which regulates ecclesiastical affairs and the Common Law which deals with temporal rights and wrongs, and then states that this book is a summation of the usages and doctrines of the Common Law. This statement the entire structure of the book itself confirms. It nowhere takes the form of an original text to which additions have been made or in which comments are inserted, but treats its matter subject by subject as represented in the current laws whether of older or of later origin.

Again, in the third section of the first chapter, allud-

ing to his purpose to reform abuses by giving to the judges a clear statement of the laws, he says that from the time of Alfred to the reign of Edward I many laws had been made by different kings which had not been put into writing and definitely published, for which cause they were not sufficiently known and understood; and then devoting the remainder of the section to the recital of some of these neglected laws concludes it with the promise to recite the others as his work proceeds. From this point to the end of the fourth chapter the work is to all intents a handbook of legal rules, made up, as such books are at the present day, from whatever sources appear to the author sufficiently reliable and expressing the law in terms at once succinct and easily intelligible. Having laid his foundation by this brief statement of the laws the author then exposes the judicial errors which have arisen from ignorance of them or from their neglect. Of abuses against the unwritten laws he describes one hundred and fifty-five, propounding each in a short and vigorous sentence as a matter well known to all who understood the practical administration of the law. Following these, he enumerates various defects in the contents or enforcement of Magna Charta, the Statutes of Merton and Marlbridge, the first and second Statutes of Westminster, and other Statutes of the reign of Edward I. In these assertions, whether of the laws or their abuses, no vestige of a more ancient treatise is visible,

although it is apparent that without the aid of experienced lawyers so formidable and detailed an indictment could not have been framed.

Conceding thus to Andrew Horn whatever merit the authorship of The Mirror as an independent and original treatise may involve, we approach the question whether it possesses any *authority* either as an exposition or a history of the law. At first blush it might seem as if the foregoing statement of its character and origin precluded any controversy upon this question, but as a matter of fact concerning no work in the entire realm of legal literature have more opposite and extreme opinions been expressed. As early as A. D. 1550, in Fogasse's Case (1 Plowden, p 8) Bradshawe, Attorney-General, cited it as an authority for the guidance of the court, saying: "And so of ancient time the law of this realm has been accordingly, as it is expressed in the book called The Mirror of Justices which was made before the Conquest." Lord Coke, in the Prefaces to his ninth and tenth volumes of Reports, speaks of it as follows: "I have a very ancient and learned treatise of the laws and usages of this kingdom, whereby this realm was governed about eleven hundred years past." "In this Book in effect appeareth the whole frame of the ancient Common Laws of this realm." "So as in this Mirror you may perfectly and truly discern the whole body of the Common Laws of England." "In this ancient Mirror you may also

clearly discern, as far as the reign of the often-named King Arthur, the great antiquity of the officers and ministers of the Common Law." "The most of it was written long before the Conquest as by the same appeareth, and yet many things were added thereunto by Horn, a learned and discreet man (as it is supposed) in the reign of Edward I." Lord Chief Justice Tindal *in re* Serjeants at Law, A. D. 1840 (6 Bingham, N. C., p 187), thus classes it with Bracton and the public records as evidence of the ancient law: "That the antiquity of the state, degree and office of a serjeant at law is as high at the least as the existence of the court itself is evident from all the text-writers and records which bear upon the point. The serjeants are mentioned in the Mirror of Justices, a book of great authority and of the earliest, though uncertain, date; by Bracton who wrote in the time of Henry III; and in records which are to be found in the Tower in the time of Edward I." Reeve, the cautious and laborious historian of English Law, regards The Mirror with less confidence as an exact representation of ancient laws, but characterizes it as "a curious, interesting, and in some degree an authentic tract upon our old law." Finlason, in an extended note to Reeve, speaking of the disclosures of The Mirror concerning the Saxon age, says that "of the legal history of that age, and of the whole intervening period up to the present (Edward II) reign, it affords the most valuable illustrations. And this because from its nature

and character it is essentially historical, *professing* to have been based upon memorials of the age of Alfred, and to have embodied all the changes of the subsequent period, and *proving* that it was so by many internal evidences of the most certain character. . . . On the whole, there is no book on the law of greater use and value to a legal historian, as illustrative of our legal history and especially of the transition from the Saxon to the Norman age and the long period between the age of Alfred and the age of Edward."

Against this array of legal authorities several distinguished scholars, most of them rather historians and antiquarians than lawyers, have pronounced a contrary opinion. Sir Francis Palgrave in his "English Commonwealth" rejects it "as evidence concerning the early jurisprudence of Anglo-Saxon England," although admitting it to be "a very curious specimen of the apocrypha of the law." Pollock and Maitland, in their History of English Law dismiss it from consideration with the remark: "Once for all we say that of the Mirror of Justices we shall take no notice. Its account of criminal law is so full of fables and falsehoods that as an authority it is worthless." Professor Maitland, in his introduction to the edition published by the Selden Society, even appears to take the view that the Mirror was a deliberate attempt to misrepresent rather than truly represent the ancient laws.

Into this controversy it is not the purpose of the pres-

ent editor to enter. No data which could throw light on this question are now accessible that have not already been examined and discussed by abler critics than himself. In the imperfect condition of the manuscripts from which the current translations have been made, and in the possible departures from the original which may exist in them even where they seem to be most perfect, adverse criticism based on verbal inconsistencies with other ancient documents loses much of its convincing force, and may be fully overcome should other manuscripts hereafter be discovered. Meanwhile it seems incredible that Andrew Horn, the "learned archivist and antiquarian," the author of the *Liber Horn,* the incumbent of one of the most important offices in England, should have solemnly bequeathed to the great merchant-guild of London a book which he did not know to be worthy of his gift and their acceptance; or that the author of The Mirror, be he Horn or another, should have made so violent and specific an attack upon the English Bench of his own day unless his statements of the law and of its violations were in harmony with the traditions and experiences of the people to whom it was addressed.

WASHINGTON, JUNE 1908.

THE TRANSLATOR TO THE READER.

Courteous Reader:

It hath ever been an Objection (grounded upon Ignorance,) which hath been made by the meaner sort of the people to traduce the common laws of *England,* and to bring the professors thereof into contempt, to give out speeches, and cast it in the teeth (as it were) of them, that the said laws are built but upon a sandy foundation, *viz.* the conceits of a few men, and that they are not grounded upon the laws of God, from which all laws of men ought to flow, as from a clear and pure fountain.

This vulgar conceit and objection hath been principally nourished amongst them, because the common laws have been kept from their view and understandings, being for the most part published in the *French* tongue.

I must ingenuously confess, that since it is a received maxim amongst us, that ignorance of the law doth excuse no man, that it were good that the fundamental laws were published in our mother tongue, that so no person might be misconusant thereof. And I have ob-

served, that it hath been the course and care of most of the late publishers of our laws, to put them forth in such language as the common people might the better know them, and practise the due observation of them. But that I may with the more ease and plainness answer the frivolous objection, remove that fond conceit of the ignorant, vindicate our common laws from so foul an aspersion, and let the objectors see from whence our laws deduce their original (though the learned author in the ensuing treatise hath in part done it); yet for the clear manifestation thereof I shall intreat the courteous reader to be pleased favourably to accept of this short breviary of the grounds and originals of the common law, which I shall apply only as an introduction to the work which followeth.

All laws are comprehended under a three-fold division: 1. The law of nature. 2. The law of God, of faith, or of the gospel. 3. The law of man, made upon the dictates of reason; upon all which laws the common laws of *England* are built, as upon firm and sure foundations.

The first is, that which is called the law of nature, which is ordained of God, and may be called God's law, united unto man's nature; for what was that image of God in man, consisting of righteousness, holiness and truth; but *lex primordialis,* a primordial law exactly requiring, and absolutely enabling the performance of duties of piety unto God, and of equity to men both in

habit and art. **Antiqua scripta suit lex in hominum mentibus, et vigebat.* God in the beginning wrote his laws in men's hearts, and therefore according unto the opinion of most learned Divines and Legists: *Lex naturæ nihil aliud est quam participatio legis æternæ in rationali creatura;* and according to others, *Lex naturæ est lumen ac dictamen illud rationis, quo inter bonum et malum discernimus.* The most principal precepts of the law of nature (which are also maxims *and grounds of the laws of England*) *are* 1. Deum *venerara.* 2. *Honeste vivere.* 3. *Patriæ magistratibus, et parentibus obedire.* 4. *Alteri ne facias quod tibi non vis fieri.* 5. *Suum suique tribure.* 6. *Tollere nocentes e medio propter serrandam publicam salutem.* 7. *Rerum dominia, proprietates, possessiones, et usum distinguere;* To honour God, to live honestly, to obey magistrates, etc., to do as we would be done unto, to render every one his due, to punish the guilty for the preservation of the public, to distinguish and settle the dominion, propriety, possession, and use of temporal things.

These fundamentals of the law of nature are not principally acquired or obtained by art, or doctrine, but naturally ingrafted. Learning and instruction serve only to bring forth and increase those natural seeds; but neither learning nor instruction do principally and originally give them; they are (saith *Socrates*) but as

* St. Ambrose.

skilful midwives, whose office it is only to further the birth of the child, not to beget the child.

The second is the law of God, the law of faith, or of the Gospel; which may well be called *lex amoris,* the law of love. Is not this nation Christian? Hath it not professed the common faith for 1200 years? Do not our laws all tend to the maintaining of peace, concord and love, fruits of the gospel? Are not all statutes, acts of parliament, constitutions, customs, made and used for the government of this people, founded upon such principles? Let the objectors cite me any law in use now amongst us, which is not warranted by some express gospel text, either in the letter, or not by necessary consequence drawn from it; sure I am that every law, custom, usage, privilege prescription, act of parliament, or prerogative, which doth exalt itself above or beyond the law of God, the law of Christ, or the law of nature, hath ever by the worthy sages of our laws been declared to be void; it were to no purpose to instance upon particulars, it is sufficient to say, that as it appertaineth to all godly and Christian men to observe and keep this law; so to let all men know, that we are instructed by the worthy professors of the gospel of Christ, in the fundamental rules and grounds of this law, to live after it, and to direct all our words and actions according to it, and by it; and therefore I shall not say more of it.

The third the laws of men, and the municipal laws

of this realm, which although they may seem to some to have their progeny from men, (for as *Solon* to the *Athenians, Lycurgus* to the *Lacedœmonians, Numa Pompilius, and Actius Claudius* to the *Romans,* were accounted the principal authors and givers of law to those several nations; so *Alured* or *Alfred, Athelstone, Edmundus, Edgar, Canutus, Edward* the Confessor, *William* the first, and *Henry* the first, called *Beauclark,* noble and famous Princes of this nation, part of all whose laws are yet in force, were the chief promulgers of many necessary and good laws yet in use with us in this realm); yet if we look into their laws we shall find, that most of them have their rise from a higher power, from the law of God, and the law of faith. It is true, that some Historiographers * have written, that the original of the common laws now in use, flowed first out of *Normandy.* I shall decline that as to the generality; but as *Cicero* was bold to derive the pedigree of his *Roman* law from the great God *Jupiter,* so I hope without offence I may be emboldened in the person of our common law, to say, That when the laws of God and Reason came first into *England* then came I in.

The temporal laws of this kingdom may be divided into three parts. 1. The general or common law. 2. The customary law. 3. Statute or parliament laws; the

* Dan. Hist. in tit. *Will.* Conq. *Cicero* l. 1. *de legibus.*

end of all which are, *ut sopiantur jurgia, et vitia propulsentur, et ut in regno conservetur pax et justitia.*

The common law is nothing else but pure and tried reason (*responsa prudentum*) allowed and known, containing the principles and maxims of law (consonant unto the laws of God) with a certain method for the orderly proceeding therein; the rest consisting in the minds of the sages of the law, ready by argument to approve what is truth, and under-propt with authorities to condemn what is false.

The customary laws are certain ancient customs grounded upon reason, which abridge the course of the common law. The diversity of customs have grown by reason of several nations who have had government over this kingdom; as 1. The *Britains.* 2. The *Romans.* 3. The *Britains* again. 4. The *Saxons.* 5. The *Danes,* and lastly the *Normans;* all which sorts of people have left behind them within this realm part of their language, and part of their country usages.

The customs within the realm are called by several names:

As { *Customs.*
Prescriptions.
Usages.
By-Laws.

Customs extend properly to countries, cities, bor-

oughs, towns corporate, and large signiories. 2. Prescriptions run with persons who have capacities to have interests and properties. 3. Usages refer to places or towns not incorporate, as to inhabitants and the like. 4. By-laws are properly made in courts by the tenants of the manor or precinct, or out of courts, with a common consent for good order and neighbourly usage. The efficient causes of good and lawful customs are, reason and time, the one begetting, the other bringing forth and continuing the same; in one place Master *Lit,* saith, this is a good custom, because it stands with some reason; in another, this is a void custom because it is against reason.

3. The last is statute or parliament laws; Parliaments have been ancient, they were in the time of the *Saxons,* long before the *Norman* conquest, (for as the proverb is) in the time of the *Danes,* the laws lay then in water, the people were governed rather by princes wills than public laws; for then (as one saith) *Sepultum suit jus in regno, leges et consuetudines simul sopitæ, temporibus illorum prava voluntas, vis et violentia magis regnabant, quam judicium in terra.* And although in the *Saxons* time I find the usual words of the acts then to have been, *edictum, constitutio,* little mention being made of the commons, yet I further find that, *tum demum leges vim et vigorem habuerunt, cum fuerunt non modo institutæ sed firmatæ approbatione communitatis.*

Our author and others tell us, that the administration of justice was only originally in the crown, and kings in their own persons rode circuit every seven years through the realm, to hear the complaints of their people, and to redress public grievances. But after the division of the realm into shires, public courts were erected; as the county court, sheriffs turns, hundred court, court leets, views of frankpledges, and court barons, for the conservation of the king's peace, and the hearing and determining of all differences, debts, contracts, etc., which might arise betwixt party and party; and all persons were sorted into companies or societies, wherein ten of the principal men called, *capitales plegii,* or *franci plegii,* because they were freemen, stood as sureties for the residue, that they should stand to justice, and not fly from it when they had committed any offence; the law of Saint *Edward* is most excellent to that purpose in these words; *Est quædam summa et maxima securitas qua omnes statu firmissimo sustinentur, viz. ut unusquisque stabiliat se sub fidejussionis securitate, (quod Angli vocant friburgher;) hæc securitas hoc modo fiebat, quod de omnibus villis totius Regni sub fidejussione decennali debeant esse universi:* and to that purpose also is the ordinance of king *Alured: Decrevit Aluredus ut liberæ conditionis quisque in centuriam ascriberetur aliquam, atque in decemvirale conjiceretur collegium;* the difference only consisting in

this, that king *Alured's* law extended but to freemen, Saint *Edward's* to all men.

This *decennalis fidejussio,* or *decemvirale collegium,* by our author is called the decennery, who were charged to bring forth the person of every offender to answer unto the law; whereof Mr. *Bracton* speaketh in these words: *De eo autem qui fugam fecerit* (he speaketh of one after a felony committed) *diligenter erit inquirendum si fuerit in franciplegio et decenna, et tunc erit decenna in misericordia coram justiciariis quia non habent ipsum malefactorem ad rectum.* And according to that law, if a felon after his flying, or conviction, were possessed of goods, the town or decennary was answerable for the same. And if the same were imbezzled, or holden from them, the decennary might seize those goods in whose possession soever they were found; as appeareth by 3 *E.* 3. Itin. North, *Fitz. Coron.* 366. *Quod vicecomes et decennarii seisire possunt cattalla felonum in manus domini Regis; et vic. cattalla illa deliberabit villæ ad respondend. Regi in itinere, quod si vic. nec decennarii seisierint villa respondebit dom. regi in itinere;* but this law hath been since altered by the statute of 3 *E.* 3.

I have, Courteous Reader, stood the longer upon these things, as well to vindicate the common laws from those weak cavils of the ruder sort, as to demonstrate the care our ancient kings and counsels have had for the peaceable Government of the people of the land, accord-

ing to the right rules of justice, deduced from the law of nature, of God, and of right reason; and I wish that Princes in this age would consider and put in practice, that golden rule of *Demosthenes; Bene gubernare, recte judicare, juste facere;* so should their kingdoms flourish, and they themselves be in high estimation in the eyes of all their people.

In these distracted times, wherein the fundamental laws, and liberties of the subject have been by a malignant party so much opposed, I have offered this treatise, intitled, *The Mirrour of Justices;* I have translated the same out of the *French* tongue into *English:* in this book many of those fundamental laws so much of late called upon, are to be found (though I do not warrant all in this book to be law at this day: many of the laws being obsolete, and altered by acts of parliaments and common usages) it hath been some difficulty for me to finish it: and although that the manuscript copy be in the original very imperfect; the *French* impression by mis-joining of words in many places without sense, and false printed; the terms of law therein for the most part obsolete and worn out; yet have I endeavoured (as all translators of books, especially of books of the law, ought) to keep myself close to the words and meaning of the author, and of the law then in use and practice, well knowing, that laws many times have their interpretation according to the strict letter, and not accord-

ing to such flourishes of rhetoric and oratory as may be put upon them.

I entreat thee, Courteous Reader, to accept of it as it is; if thou find find any errors in the translation (as I suppose thou mayest do many) to pass them over, or amend them: if thou find any thing in the work itself which may advance the common laws, or the liberties of the subject, or set forth the true prerogative of Kings, to weigh them in the balance of justice: if thou find any thing therein not fit to be published in these days of distraction betwixt the king and people, consider that this work was written in the time of king *Edward* the first: consider again, it is not mine, but the author's; who for his antiquity and learning in the laws of the realm then in use, hath found the favour and honour to be cited by many of the grave sages of our public laws; so I commend it to thy favourable acceptance, and bid thee farewell:

Thy friend, who in his desires strives that the common laws of the land may now and for ever flourish. W. H.

THE PREAMBLE.

When I perceived divers of those, who should govern the law by rules of justice, to have a respect to their own earthly profit, and chiefly to please lords, and their friends, and to have a respect thereunto, and not to give their consents, that the right usages should be ever put in writing, whereby power might be taken from them to pervert judgment, and others to banish or disinherit, without punishment for the same; covering their offences by the exceptions of error and ignorance, never or little regarding the Souls of offenders condemned by their judgments, as their duties and places required; having used to judge the people according to their own heads by abusions, and by the examples of others, erring in the law, rather than by the rules of the Holy Scripture, greatly to have erred from the true understanding thereof, building without any foundation, and to judge and have cognizance, and jurisdiction in that which they little understood, both in the law of the land, and of the law of the persons; as it is of those who take upon them Art to pronounce false judgments, and by their executions, falsely to prevent the privileges of the King, and the ancient rolls of his treasure. Taking the same into my serious consideration, and the foundation

and original of the usages of *England* given by the law, together with the rewards of good judges, and the punishments of others; I thought it needful (wherein my companions gave me their assistance) to study the Old and New Testament; and therein we found, that the law is nothing else but rules, delivered by our holy predecessors in the Holy Scriptures, for the saving of souls from perpetual damnation, notwithstanding that the same were disused by false judges. And we found that the Holy Scripture remained in the Old and New Testament.

The Old Testament contained Three Orders

- The Law.
- The Prophets.
- The Hagiographies.

In the Law there are five volumes.

- Genesis.
- Exodus.
- Leviticus.
- Numbers.
- Deuteronomy.

In the order of the prophets are eight volumes.

- Josua.
- Judges.
- 1 2 Samuel, called 1 and 2 book of Kings.
- The 1 and 2 book of Kings, called 3 and 4 book of Kings.
- Isaiah.
- Jeremiah—Ezekiel.
- The books of the 12 small prophets.

In the order of Hagiographie are

- Job.
- The Psalms.
- Proverbs of *Solomon.*
- Ecclesiastes.
- The Song of *Solomon.*
- Daniel.
- Paralipomenon.
- Esdras.
- Hester.

And besides these there are books in the old Testament although they are

Not authorized Canonical.

- Tobie.
- Judeth.
- Maccabees.
- Ecclesiasticus.

The New Testament contains three books.

- The Evangelists.
- The Apostles.
- The holy Fathers.

The Evangelists contain four volumes.

- The Epistles of St. *Paul.*
- The Epistles of the Canon.
- The Revelation.
- The Acts of the Apostles.

The writings of the apostles contain four volumes.

Of the writings of the fathers there is no certain matter agreed upon.

And we find that our laws were agreeing to scriptures, and that they were in a language best known both for the help of us and the common people.

And for the condemning of false judges, I compiled this little book of the law of persons into five chapters, that is to say,

1. Of offences against the peace.
2. Of actions.
3. Of exceptions.
4. Of judgments.
5. Of abusions.

Which book I have called *The Mirrour of Justices,* according as I have found their virtues, and the most excellent substance after the time of king *Arthur,* used by holy usages according to the rules aforesaid; and I desire you that you would amend the defects thereof, according to such lawful and true warrants as you prove both to learn the truth, and confound the daily abuses of the law.

THE CONTENTS OF THE FIRST CHAPTER.

	Section	Page
Of the original of the law	i	18
Of the coming of the English into this land	ii	19
Of the first constitutions	iii	21
Of offences, and their division	iv	30
Of the crime of majesty	v	30
Of falsifying	vi	37
Of treason	vii	39
Of burning	viii	40
Of murder	ix	41
Of larceny	x	45
Of burglary	xi	50
Of rape	xii	51
Of the office of the coroner	xiii	52
Of the Exchequer	xiv	62
Of inferior courts	xv	63
Of the turns of the Sheriffs	xvi	65
Of views of frankpledges	xvii	66

CHAPTER I.

SECT. 1.

OF THE OFFENCES AGAINST THE PEACE.

Of the original of the law.

ALMIGHTY God shewed more love to man than to any other creature; when he made him after his own image, and gave him understanding; considering that he stood continually ready to fall into sin by three manner of adversaries, and therefore he gave the law to force and drive sinners to salvation by earthly punishments; that for the pure love of God men would abstain from sin, and thereof made *Moses* their teacher, which place the Pope now holdeth.

That law by ordinance of our holy predecessors is divided into two volumes; into the canon law, which consisteth in the amendment of spiritual offences; first, by admonition, prayers, reproofs, excommunication; secondly, into the written law, which consisteth in the punishing of temporal offences, by summons, attachments, and punishments or penalties.

Of the spiritual law, the prelates judged; and lay

princes of the other law: the law whereof this sum is made, is the written law of the antient usages warranted by the holy scripture. And because it is given to all in general, it is called the Common Law. And because there was no other law but that, were general counsels and parliaments in use, and that direvsly in several places, according to the qualities of the people of divers countries, and boroughs; they were, according to antient privileges, changed for the ease of the people of those places.

All our usages and laws are also laid for the keeping and exaltation of the peace of God; and therefore it is to be known, that the people are not to be adjudged by similitudes and examples not canonized, but by the love of peace, of chastity, of temperance, of charity, of mercy, and of good Works.

Sect. 2.

Of the coming of the English into this realm.

After that God brought down low the nobility of the Britons, who used more force than right, he delivered the realm to the most humble and simple of all the countries adjoining; that is to say, to the *Saxons,* who from the parts of *Almaine* became conquerors thereof, of which nation there were forty sovereigns who were

companions. These princes called this land *(England)* which before was called Great Britain, or *Britania Major.* These princes after great wars, tribulations, and troubles, suffered for a long time, chose themselves one king to reign over them, to govern God's people, and to maintain and defend their persons and their goods in peace by rules of law. And at the beginning they made the king to swear, that he should maintain the christian faith with all his power, and govern his people by law, without having regard to the person of any one; and that he should be obedient to suffer right as well as his other people should be.

And afterwards this realm was divided in inheritances according to the number of those companions who then remained in the realm, into parts, by shires, and every one had a shire delivered unto him to keep and defend against the enemies, according to every one's estate; that is to say.

Barkshire
Bedfordshire
Buckinghamshire
Cornwall
Chestershire
Cumberland
Dorset
Devonshire
Derbyshire
Gloucestershire
Cambridgeshire
Herefordshire
Hertfordshire
Huntingtonshire
Kent
Lancashire
Leicestershire
Lincolnshire

Essex	*London*
Everwickshire	*Middlesex*
Yorkshire	*Surry*
Norfolk	*Shropshire*
Northamptonshire	*Somersetshire*
Northumberland	*Southampton*
Nottinghamshire	*Staffordshire*
Oxfordshire	*Westmoreland*
Rutlandshire	*Wiltshire*
Suffolk	*Worcestershire.*

And although that the king ought not to have any peer in the land; nevertheless because that the king of his own wrong if he offend against any of his people, nor none of his commissaries can be judge and party; it was behoveful by the law that he should have companions, to hear and determine of all writs, and plaints, of all wrongs, as well of the king as of the queen, and her children; and of those especially where one could not have otherwise common right: these companions are now called counts, earls, according to the Latin comites; and so at this day are those shires called counties, in Latin *comitatus;* and that which is without these counties, belongeth to the English by conquest.

After that time, these companions, after the division of the realm into shires, divided their people which they found scattering about into centuries, and to every century they appointed a centiner, and according to the

number of the centuries spake every shire; and to every centiner they assigned his part by metes and bounds, to keep and defend the same with his century, so that they were ready to run to their arms at all times when the enemies came, or other needful occasion was. And these divisions in some places are called hundreds, according to the number of the first people; and in some places tithings, or wapentakes, according to the English; (which is in French taking of arms); these divisions they made, whereby the peace, which consisted in charity and true love, was kept and maintained.

SECT. 3.

Of the constitutions made by the ancient kings.

Of king Alfred.

FOR the estate of the realm, king *Alfred* caused the earls to meet, and ordained for a perpetual usage, that twice in the year, or oftener, if need were, in time of peace they should assemble together at *London,* to speak their minds for the guiding of the people of God, how they should keep themselves from offences, should live in quiet, and should have right done them by certain usages, and sound judgments.

King Edward I.

By this estate many ordinances were made by many

kings, until the time of the king that now is; the which ordinances were abused, or not used by many, nor very currant, because they were not put into writing, and certainly published.

One of the ordinances was; that every one should love his creator with all his soul, and according to the points of the Christian faith; and wrong, force, and every offence was forbidden.

And it was assented unto, that these things following should belong to kings, and to the right of crown. *Sovereign jurisdiction.*

The sovereign jurisdiction throughout the whole land unto the midst of the sea encompassing the whole realm, as franchises, treasure found in the land, waif, estray; goods of felons and fugitives which should remain out of any one's rights, counties, honours, hundreds, wards, goals, forests, chief cities; the chief ports of the sea, great manors; these rights the first kings held, and of the residue of the land they did enfeoff the earls, barons, knights, serjeants and others, to hold of the kings by the services provided, and ordained for the defence of the realm according to the articles of the ancient kings.

Also coroners were ordained in every county, and sheriffs to defend the county, when the counties were dismissed of their guards, and bailiffs in the places of centiners. And the sheriffs and bailiffs caused the free-tenants of their bailiwicks to meet at the counties and

hundreds; at which justice was so done, that every one so judged his neighbour by such judgment as a man could not elsewhere receive in the like cases, until such times as the customs of the realm were put in writing, and certainly established.

And although a freeman commonly was not to serve without his assent, nevertheless it was assented unto, that free-tenants should meet together in the counties, hundreds, and the lords courts, if they were not especially exempted to do such suits, and there judged their neighbours.

And that right should be done from 15 days to 15 days before the king and his judges, and from month to month in the counties, if the largeness of the counties requireth not a longer time; and that every three weeks right should be administered in other courts; and that every free-tenant was bound to do such suit; and every free-tenant had ordinary jurisdiction: and that from day to day the right should be hastened of strangers, as in courts of Pipowder according to the law-merchant.

The turns of sheriffs and views of free pledges were ordained; and it was ordained, that none of the age of 14 years or above, was to remain in the realm above forty days, if they were not first sworn to the king by an oath of fealty, and received into a decennery.

It was ordained, that every plaintiff have a remedial writ to the sheriffs, or to the lord of the free in this form. *Questus est nobis C. quod O. etc. Et ideo tibi*

(vices nostras in hac parte committentes) præcipimus quod causam illam audias et legitimo fine decidas.

It was ordained, that every one have a remedial writ from the king's chancery, according to his plaint without difficulty, and that every one have the process from the day of his plaint without the seal of the judge, or of the party.

It was ordained, that coroners should receive appeals of felony, and should give the judgments of outlawries, and should make the visnes in the causes aforesaid; and that all the next towns should present to the coroners in the county the mischances of the bodies of the people, and the names of the finders.

And that every county should present felonies, mischances, and other articles presentable in the Eyres for offences, that the kings might send to summon them to appear against the coming of the kings or of the justices assigned to hold all pleas.

And for the great damages which the Commons suffer by amercements issuing out for concealments, and for fault of these presentments in Eyres it was agreed unto, that these presentments in Eyres should be by the coroners chosen by all the Commons of the county, and so the coroners are as it were the Commons bailiffs as to these charges: nevertheless they are the king's ministers, because they take an oath to him. For personal trespasses nevertheless, the coroners are only punishable, without any damage to those who chose them,

unless they have not sufficient wherewith to satisfy for their trespasses.

The Exchequer was ordained in manner as followeth; and the pecuniary penalties of earldoms, and baronies certain, and also of all earldoms and baronies intire or dismembered; and that those amercements were affeered by the barons of the Exchequer, and that the estreats of the amercements be sent into the Exchequer though they were amerced in the king's court.

It was ordained, that after a plaint of wrong be sued, that no other have jurisdiction in the same place, before the first plaint be determined; and from thence came this clause in the writ of right, *Et nisi feceris vicecomes faciat.*

It was ordained, that every one of the age of fourteen years and above should be ready to kill mortal offenders in their notorious sins, or to follow them from town to town with hue and cry; and if they could not kill them, the offenders to be put in exigent, and outlawed or banished.

And that none should be outlawed but for a mortal offence, and in no other county but where he committed the offence.

It was ordained, that the king's courts should be open to all plaints, by which they had original writs without delay, as well against the king or the queen, as against any other of the people, for every injury but in case of life, where the plaint held without writ.

It was ordained, that no king of this realm should change his money, nor impair it, nor inhance, it, nor make any other money but of silver, without the assent of the lords and all the commons.

It was ordained, that felonies should be tried by appeals, and that appeals might sometimes be ended by battle, and that exigents of the offenders should continue by three county courts before the outlawry.

It was ordained, that all free-tenants should be obedient, and appear at the summons of the lords of the fee, and if one caused a man to be summoned elsewhere than in the fees of the avowants, or oftener than from court to court, that they were not bound to obey such summons, if not at the charges of the avowants of the summons.

It was ordained, that knights fees should come to the eldest son by succession of the inheritance, and that socage lands should be partable amongst the right heirs, and that none might alien but the fourth part of his inheritance without the consent of his heir, and that none might alien his lands by purchase from his heirs, if assigns were not specified in the deeds.

It was ordained, that every one might endow his wife *ad ostium ecclesiæ* or of the monastery, without the consent of his heirs; that heir females, nor widows should not marry themselves without the assent of their lords, because the lords were not bound to take the homages from their enemies, or other unknown persons; and the

same is forbidden upon pain of forfeitures, whether their parents were consenting thereunto or not; and that widows, in case they marry without the consent of the guardians of the lands, should lose their dowries; that those also should be disinherited or lose their dowries that married before; widows nevertheless this should not forfeit their inheritance for whoredom, and that the eldest son should forfeit nothing to the prejudice of his ancestor, nor his heirs, living the ancestor whose heir apparent he is.

It was ordained, that the lords of fees might summon their tenants by the award of their peers into the lords courts or into his counties, or the hundred at all times that they detain or deny to do their services in deed, or in word, *et è contra,* that is to say; the lords against the tenants, and there they shall be acquitted, or forfeit their allegiance with the appurtenances, by the judgment of the suitors, and all their tenancy; and the tortious or outragious lords shall lose their fees and the services, and the tenements shall go to the chief lords of the fee.

It was forbidden, that none be distrained by his moveable goods, but by their bodies, or by their fees, except in special cases after mentioned.

It was ordained, that infants should be in ward with their lands and goods, and that the guardians should answer for trespasses done by their wards, and give satisfaction to those who were damaged, except of felo-

nies; and that their marriages should be to the lords, and that they should have escuage, relief and aids of their tenants which they held of the lords, as to make the heir of the lord knight, and to marry their eldest daughters, and that the heirs males should do homage to their lords, and the females should swear fealty; and that the inheritance should descend to all the children by warrant of right of the possession, and that the male should bar the female, and the next the more remote by warrant of right of propriety.

It was ordained, that offenders guilty of death should not be suffered to remain amongst the guiltless, and that the king should have the value of the lands and the rent for one year, and the waste of felons lands; and also that he should have all *deodand;* and that the goods and chattels of usurers should remain as escheats to the lords of the fees.

Essoins were ordained in mixt and real actions, and not in personal actions, as after is said.

It was forbidden, that any one should alien the profits of his lands, or his rents to any one out of the realm; and it was also forbidden, that none sold wine in the kingdom but by ton or pipe.

It was forbid, that no money was to be carried out of the realm; and that none should carry wool out of the kingdom, nor should kill lamb, or calf which might live, nor ox which was not gelt.

It was forbidden, that no bishop do ordain laymen

to the order of clerks above the number which are sufficient to serve the churches, whereby the king's jurisdiction be destroyed: it was ordained, that the poor should be sustained by parsons, rectors of the church, and by the parishioners, so that none of them die for want of sustenance.

It was ordained, that fairs and markets should be in places, and that the buyers of corn and cattle should pay toll to the lords bailiffs of markets or fairs; that is to say, a false penny of six shillings of good, and of good, less, and of more, more; so that no toll exceed a penny for one manner of merchandize: and this toll was given to testify the contracts, for that every private contract was forbidden.

It was ordained, that no action was receivable to judgment, if there was not a present proof by witnesses or other things; and that none was bound to answer to any suit, nor to appear to any action in the king's courts before the king's justices, before they found sureties to answer damages and the costs of suit, if damages lay in the case, except in four offences, disseisins, certification of disseisins, attaints, re-disseisins, and other cases. To which ordinance king *Henry* the first put this mitigation in favour of poor plaintiffs, that those who had not sufficient sureties present, should make satisfaction according to their ability, according to a reasonable taxation; and in the same manner in summons's, and in hatred of perjury attaints were ordained in all actions.

It was forbidden, that no merchant alien should repair into *England* but at four fairs, and that none such should remain in the realm above forty days.

Of the curtesy of king *Henry* the first, it was granted, that all those who survived their wives who were with child by them, should hold their wives inheritance for ever.

Many other ordinances were made by them, and since have been made in aid of the peace, according as afterwards shall be said.

Sect. 4.

Of Offences, and the division of them.

The division of offences is according to that which appeareth by the punishment. Mortal, or venial.

The mortal offences are these:

Of { *Majesty, Burning, Burglary,*
Falsifying, Larceny, Homicide,
Treason,

Of the offence of majesty.

The crime of majesty is an horrible offence done against the king; and that is either against the king of heaven, or an earthly king.

Against the king of heaven in three manners. *Heresy, venery, sodomy.*

Against the earthly king in 3 manners.

1. By these who kill the king, or compass so to do.

2. By those who disinherit the king or his realm, by bringing in an army, or compass so to do.

3. By those adulterers who ravish the king's wife, the king's lawful eldest daughter before she be married, being in the king's custody; or the nurse, or the king's aunt, heir to the king.

Heresy is an evil and false belief, arising out of error of the true Christian faith; under this offence is witchcraft or divination, which are members of heresy; and in case less notorious they come by presumptions of ill works, which are by evil art, arising from an ill belief; and sometimes of a firmer belief they do wonders, and sometimes they come by open confessions of error.

So heresy is an art to divine.

Divination properly is taken in the ill sense, as prophecy is taken in a good sense.

Divination used to be in many kinds, whereof one manner of divination was through an ill belief, by the which the witch caused *Samuel* to rise, who warned *Saul* of his death.

Another kind is piromancy, which is done by fire.

Another is areomancy, which used to be done by signs in the air.

Another is Hydromancy, which is done by signs in the water.

Another is geomancy, which is done by signs in the land.

Another is necromancy, which is done by death, by making the dead to speak.

Another is south-saying which was done by signs in the entrails and bowels of birds.

On the other part, some diviners used to put trust in lots, some in songs, some in verses of psalms, some in carrying gospel and charms about their necks, some in enchantments and spells, some in signs in the entrails of beasts, and in the palms of the hands.

Some were called mathematicians, and *magi,* and divined by the stars.

Others were called *Arioles,* who took their answers from the devil by evil men.

Others south-sayers, who numbered nights and days and hours, whereby they ordered their business. There were many other kinds, all which manner of diviners are to be, by the word of God himself, and authority of the church to be excommunicated, and forbidden as much as mahometanism, and things against the true faith. And this St. *Augustine* proves by many reasons; and hence it is, that they who travel to witches or diviners to know things to come give that to the creatures which belongeth to God alone. Wherefore these wicked doers are to be removed from the society of God's holy

people, so that no good Christian be taken with their art, nor partner in their sins.

SECT. 5.

THE crime of majesty, or offence against the king is neighbour to many other offences; for all those who commit perjury, whereby every one lieth against the king falleth into this offence. As the king's ministers who are sworn to do justice, and forswear themselves in any thing, so those who disseise the king of any of his franchises, or of any manner of right which belongeth to the crown by occupations, or purprestures, or in any other manner, although it be no mortal offence.

Into perjury fall all those subjects of the king who appropriate to themselves jurisdictions over the king, and of themselves make judges, sheriffs, coroners, and other officers to have conusance of law.

Into perjury against the king fall all the king's subjects who appropriate to themselves jurisdictions of counties, honours, sockness, *retorna brevium,* or any thing which may fall to his inheritance; as wards, escheats, reliefs, suits, services, or marriages, fairs, markets, enfangthef, outfangthef, waif, estray, treasure found in the ground, warren in their own lands, or in the lands of others, toll, pavage, pontage, chiminage, murage, carriage, or other the like customs.

Into perjury against the king fall those the king's subjects who take abjurations of felons and fugitives, and are no coroners, nor warranted by the king so to do; and those who put out any indicted or appealed of any crime out of the roll of the coroner; and those coroners who oftener than once receive appeals of approvers, or procure that a man who is innocent be appealed by an approver. And those who have detained appeals of approvers of foreign acts, or whereby any foreigner is appealed. And those coroners who wittingly suffer the goods and chattels of fugitives to be less valued than they ought to be of right; or conceal them in part or in all, or detain them to their own uses, to the damage of the king; or deliver them elsewhere than to the towns, or for lucre have taken more than they should in damage of the towns, or suffer their servants to have the garments, or other things which are to be seized for the king's use, or the garments of the dead, or delay to do their office through covetousness.

Into perjury against the king fall those officers who pardon fines and amercements which belong to the king, or any manner of penalty, either corporal or pecuniary, without special warrant. And those officers who by summons and adjournments make the people to travel in vain, as to gaol-deliveries, assizes, enquests, or otherwise; and all those subjects who bear arms against the king, or run away from his lawful army or battle;

and those ministers who unlawfully stop, or counsel the people that they go not into war with the king, or that they are not bound to go, where they have reasonable summons; and that the people be not made knights, but according to the statutes of the realm.

Into perjury against the king fall all those the kings subjects, who hold plea of Withernam, and have not return of writs, or hold pleas of distresses, or of any other thing which belongeth to the king's jurisdiction only, without the king's special commission, or hold plea in case of life, of imprisonment, of blood-shed, of false judgments, or of any thing disavowable of right without the king's writ, or commission.

And all those the king's ministers who maintain false actions, false appeals, or false defences.

Into perjury against the king fall those ministers who deny to plaintiffs original writs possessory, attaints, or of formedon; or otherwise do delay their rights, and those who wrongfully do delay or disturb right judgments, and those who wrongfully favour wrongful judgments; and all those who use their privileges or liberties wrongfully, or too largely, contrary to their knowledge.

Into perjury against the king fall those ministers, who receive fines to other uses than to the king's use for treasure trove, for wreck, waif, estray, aliens, for blood-shed, or imprisonment, withernam, re-disseisin, or disseisin, or forswear themselves to resist, that a lawful

judgment have not execution; for usury, purpresture upon the king, or for any other thing whereof the conusance doth belong to the king.

And those receivers who pay not the king's debts as they ought to do, and are enjoined, or render to him part for satisfaction of the whole, and do not pay the king the rest.

Into perjury against the king fall those who charge the king wrongfully. And those who spend the king's quarries, timber or other things, otherwise than in the king's service, without sufficient warrant.

Into perjury against the king fall escheators, who make waste of the king's wards, or in his fees, or unlawfully take venison, fish, or other goods; and by their authority seise the goods of the dead, and for gain release them; or endow widows to the king's loss; or make hurtful extents for the king, accounting for less than the very value to the king, or willingly suffer possessions to remain in mortmain which ought to be seized into the king's hands, and whereof the king ought to have the profit, or which receive more of their bailiwicks than they answer to the king, or who wittingly suffer feoffments of land, or of advowsons of churches prejudicial to the king, or who suffer them to alien wards or marriages to the king's prejudice, or suffer the ages of infants to be proved in damage, or to the king's prejudice take fines for wards or marriages without

writ, or deceive any one by colours of their office, or levy money upon any upon his own proper amercement.

Into perjury against the king fall sheriffs, who too high charge the people, by a surcharge upon the people of horses, or of dogs, and who levy fines or amercements for escapes of prisoners, or for any thing against law before the escapes be adjudged by the justices in Eyre, and who increase or diminish fines or amercements beyond the wills of the afferors or jurors, and those officers who conceal people deliverable to prison and do not bring them to judgment.

Into perjury fall all those officers who are reproveable for the sufferance, negligence, or consent to the alienation of the franchises or of the right of the king wrongfully, or to the occupying, or withholding of them.

And all those who elsewhere change old money which is forbidden for new, than at the king's change.

SECT. 6.

Of falsifying.

FALSIFYING is done in two manners; by falsifying the king's seal, and his money.

His seal may be falsified in many manners. It is always falsified when a writ is sealed, whereof the ingrossing, and the matter, or the form is not

justifiable by the king, nor by the law, nor by the lawful customs of the realm, which is not to be intended of every writ abatable.

It is falsified if a man seal therewith after that the chancellor, or other keeper thereof hath lost his warrant, either by death, or in any other manner.

It is falsified when a writ, or a patent passeth against the king's forbidding. It is falsified by those who seal by ill art, or by warrants not justifiable, and it is falsified by those who seal and have not authority to seal.

Of falsifying the money. The money was ordained round and quarterable, and use so to be made that the outward circle was apparent through the whole, otherwise it was not to be received; and that the 1 *l.* was of 12 ounces of fine silver, and it was assented unto that the king should have 6 *d.* for the sealing of every writ, and for the coinage of every pound of money 12 *d.* and no more of monies current in the realm.

The money is falsified by him who by evil covetousness maketh it not justifiable; and it is falsified by those who make it, and have not authority or warrant so to do; it is also falsified by those who for evil gain put more alloy in it then of right there ought to be. And it is falsified by all those who make it without the king's coinage. And it is also falsified by all those who by ill art counterfeit it, and by those who clip or wash it for ill gain.

SECT. 7.

Of treason.

TREASON is not done but betwixt allies, who may be by blood, affinity and homage, oath and service. By blood, as if one of parentage do any thing to another of his blood which is the cause of his death, or disinherison, or to loss of homage; for the quality of treason is the taking away of life or member, or decrease of earthly honour, or the increase of villainous shame. And in the same manner is this offence betwixt affines, as betwixt sisters, sons-in-law and parents; for as cosinage is a line of divers parceners descending of the same stock, and drawn from carnal copulation; in like manner affinity is a nearness of persons descending from carnal copulation where there is no blood; and as this offence is done betwixt affines and cousins, so it is also betwixt allies.

Alliance is sometimes by { *Service,* / *Homage,* and / *oaths.*

Which happeneth sometimes by reason of fealty issuing from the service of the fee; sometimes issuing from the oath of service of the body, and as one of the allies, parents or affines commit this offence against the other, in the same manner may they do against them.

By services; as if one who I have rewarded, to do me fealty, and be seised in demesne of a manor or other gift, or service, or courtesy, falsify my seal, or ravish my daughter or my wife, or the nurse, or the aunt of my heir, or doth any thing which is the cause of my death by a felonious compassing the same, or to the great dishonour or damage of my body, or of my goods, or discovereth my counsel, or my confession, which he is charged to conceal.

And by reward is meant, fee, possession, robe, church, rent, or other gift, and meat and drink during the service.

And as such a one may commit treason against me, who taketh from me so much that he is seized, in the same manner I may offend against him; by such action or demand he shall have against me, as I may have against him.

SECT. 8.

Of burners.

BURNERS are those who burn a city, town, house, men, beasts, or other chattels, feloniously, in time of peace for hatred or revenge. And if any one put a man into the fire, whereby he is burnt or blemished by the fire, although he be not killed with the fire, nevertheless it is an offence for which he shall die. Under this offence sometimes fall those who threaten burning.

SECT. 9.

Of Man-slaughter.

MAN-SLAUGHTER is the killing of a man by a man; for if it be done by a beast, or by mischance, it is not man-slaughter.

This offence is two ways; either by the tongue, or by the act.

By the tongue three ways; by counsel, commandment, or denial.

By counsel; as he who counselleth another to kill, and so also it is by commandment.

By denial; as he who denieth sustenance to a man.

By act many ways; sometimes by striking, by poisoning, by necessity, by will.

By striking; as it afterward appeareth in the appeals.

By poisoning or venoming; as by secret felony, and feigned friendship, giving poison to another to eat, or poisoneth or envenomed any thing, whereby a man is presently or in time killed. Or by imprisonment; as he who keepeth the body of a man in prison by colour of law, till he dieth. By chance; as by casting or drawing of a vessel, or other thing, and some one is killed by mischance, or by the falling of a tree, and other the like cases. But you must distinguish where the killing is justifiable by law, for there it is no offence; and when

he doth not that which he ought to do, and the party useth all the diligence which he may, crying out, and defending himself, for then he doth not greatly offend; but he who doth not so do he offendeth mortally.

By necessity; wherein you ought to distinguish whether the necessity be avoidable or not, and if it be avoidable, it is a mortal offence.

By will; and that may be either of himself, or of some other person.

Of himself; as in case, when people hang themselves or hurt themselves, or otherwise kill themselves of their own felony.

Of others; as by beating, famine, or other punishment; in like cases, all are man-slayers. Also this offence is done willingly; as by those who pain men so much as ought not, or not so much as they ought, he offendeth mortally. But it may be alledged; that by reason of the pain the dead doth falsely confess the felony; and sometimes by the reward of the coroners or justices are destroyed; and as it is of those who cast and leave children and others who cannot go in deserts, or in such places, and return not to them, though they do not die in the deserts, God succouring them. And also false jurors, and witnesses are men-slayers, and those who appeal others, or scandalously indict them, or in other manner falsely accuse them.

And also they fall under this offence who imprison the people in such places, or put them to such punish-

ment, where it may be found by enquest, that by those means, places or punishments they came sooner to their deaths.

Three ways was God himself killed; for tongues killed him indeed, with the other who crucified him, or procured him so to be; by the tongue *Pilate* killed him, who commanded him to be killed; by will, the false witnesses, and all those who consented thereunto killed him; and hence it is that the evangelists differ of the hour of his death, in setting forth his passions.

This offence doth contain many branches:

viz. { *Imprisonment,*
Mayhem,
Wounding,
Battery,
False witnesses.

Imprisonment is the wrongful detaining of a man's body, and that may be in two manners; either in a common prison of the king, or in a private prison which is forbidden.

In a common prison none ought to be put, if he be not attainted of an offence which requireth death; or especially appealed or indicted, and by judgment of a false and wrongful imprisonment.

A private prison is 1. sometimes rightful and justifiable; 2. wrongful.

The same is lawful and justifiable, when a man who

is bailable is taken and put in custody, till he hath found bail to do that which he ought.

People are in custody in divers manners; in one manner by the warrant of law, as it is of infants within age, women in the custody of their husbands, men of religion in the custody of the abbots, or other sovereigns of their houses, and villains in the custody of their lords.

In another manner people are in custody by common assent; as it is of ideots, of people wasters of their estates, of mad-men, and of those who are drawn to follow infamous though pardonable offences, who are to be in custody in such cases.

Into the offence of manslaughter fall all those by whom a man dieth in prison; and that may be either by the judge, who delayeth to do justice, or by duress of the keepers, or by other unjustifiable occasion.

Into this offence fall all those through whose default people die, being forsaken of those who are bound to sustain them.

And those who kill a man imprisoned, by a surcharge of pain, in case when any is adjudged to penance.

And all those who unjustly adjudge a man to death; and those who assent thereunto, and false witnesses who falsely testify a mortal offence against an innocent man.

Into this offence fall all jurors, and false physicians, and maintainers of killing, and those who beat or wound

a man, so that he is far from living, and nearer to his death.

Mayhem is the want of member, or the enfeebling of it by breaking, or cutting the bones of a man, whereby he is less able to combat.

And *Turgis* saith, that the loss of the fore-teeth is mayhem, and of the turning of the mouth, and of the little finger, and of the right joint, and the taking away the toes of the feet is mayhem, and the more reason where more loss appeareth.

And *Sennall* said, that the loss of the eyes is mayhem, if nature have not taken them away; but the loss of the middle teeth, or of the nose, or the ears is not mayhem, although the body is thereby reviled or dishonoured.

And *Billing* saith, that rasure by turning the bones of the head, or of the scull of the head backwards is mayhem, and also of other bones.

A wound is cause of death made by cutting of the hand, or the arm feloniously, which is shewed by the length, breadth or depth; for the cutting of a stone, or of a staff seldom becometh a wounding but a bruising.

SECT. 10.

Of Larcenies.

LARCENY is the treacherously taking away from another moveables corporeal, against the will of him to

whom they do belong, by evil getting of the possession, or the use of them. It is said a taking, for bailing, or delivery is not in the case; it is said of moveables corporeal, because of goods not moveables, or not corporeal, as of land, rent, advowsons of churches there can be no larceny. It is said treacherously, because that if the taker of them away conceive the goods to be his own, and that he may well take them, in such case it is no offence. Nor in case where one conceives that it pleases the owner of the goods that he take them, but thereof there ought to be apparent presumption and evidence. There be two parts of larceny.

One which is done openly in the day by robbery. The other which is done in the night, or in the twilight.

Robbery is done sometimes

By
1. *Thieves.*
2. *Tortious distresses of bailiffs and others, who wrongfully extort from the people.*
3. *Extruders and disseisors who with force openly take the goods of others as before is said.*
4. *By others, who run away with other men's wives, or wards, and their goods.*

Into this offence fall all such who take the goods of others by authority of the king, or of other great lords, without the consent of those whose goods they are.

Larceny is committed sometimes by open thieves, sometimes by treacherous; as it is in divers kinds of

merchandizes, and as it is of labourers who steal their labours, and as it is of bailiffs, receivers, and administrators of others goods, who steal them in not giving their accompts.

Into this offence fall all those who steal purses or cloak-bags, or do any other larceny, by increase or covetousness of themselves, and all their favourers.

Into this offence fall all those who suffer thieves to pass when they may arrest them; those also who may take or hinder them, or warn them of malice and do not; and those who conceal them for love of thief-boot; or other reward, or wittingly receive their larceny, or their persons.

Into this offence fall all those who steal by false measures, and false weights, or in any other manner of treachery by colour of merchandize, and those who wittingly suffer them where they may hinder them.

Into this offence fall those who wrongfully amerce the people with outragious amercements, or outragiously affeer amercements, or wrongfully condemn their neighbours either in damages or penalties; and those who wrongfully detain treasure found, wreck, waif, or estray which belongeth to the king; and those who otherwise find them, and do not restore them when they may, and know to whom they do belong.

Into this offence fall all those who take wrongful or outragious toll in markets, cities, boroughs, towns, mills

or elsewhere; and those who take pavage, murage, chiminage, carriage, or other manner of customs more than they ought to do.

Into this offence fall those bailiffs who do enquire in turns and views of frank-pledges of more articles than personal offences, and of wrongs done to the king and his crown, and of wrongs done to the common people, and those who by extortion take monies or fines for beaupleader, or for which the jurors are not charged; and those who amerce any of their own heads without reasonable affeerment of the people sworn thereunto.

Into this offence fall those who unjustly distrain, and those who sell distresses for the king's debt within the 15 days.

Into this offence fall all those officers of the Exchequer, and others who forbid to make acquittances under the Exchequer seal, to every one for so much as he hath paid; and who oftner than once cause a debt to be levied; who take rewards, whereby the towns do not in due manner according to the constitution of Winchester; or who suffer that the people be not furnished with arms according to common appointment.

Into this offence fall all stealers of other's venison, and of fish in ponds, and of conies, hares, pheasants, partridges, being in warrens, and other fowl, doves and swans, of the Eyeries of all manner of birds.

Into this offence fall all the sheriffs, bailiffs, and other the king's officers, who unjustifiably by extortions

take money of the people, as for defaults unjustifiable, or for sheaves or other custom unallowable, or for plea whereof the judge hath no jurisdiction; and those who take money to put men out of panels of juries, and put others in.

Into this offence fall all those who take lands, tenements, horses, or other things, and use them beyond the appointed time for the loan of them; and those who by the authority of their bailiffs make unjustifiable collections for monies, or other provisions, or corn in sheaves for scottals, or other festivals, or do to the people other unlawful grievance in the like case. And those sworn officers who cause fines or amercements, or other manner of duty to be oftentimes levied upon one man, without making restitution; and those officers who take of other than of the king, or of their lords, to do their office; and those who oftner than twice in the year hold sheriffs turns, or who oftner than once in the year hold views of frank-pledges in one court; and those who by unjustifiable articles amerce the people; and those who at mills or markets take outragious toll, and those who amerce the people by presentments not made by the whole decennary, or by others than of freemen.

Into this offence fall they who do any thing upon another's inheritance by evil covetousness, or for hatred.

Into this offence fall counters who take outragious salary, or not deserved, or who are attainted of ill defence, or of other discontinuance, and those who deny

their seals in judgment, and those who make contracts which are forbidden.

Into this offence fall usurers, who lend money or other things, through covetousness to take the forfeiture. And those who rob, or steal the marriages of others, or run away with other's wives, or villains with the goods of others.

And all fore-stallers, by whom victuals or cattle are made dear.

They are forestallers who within any town or franchise buy to engross, and unlawfully to sell more dear; and those butchers who sell unwholesome flesh for wholesome; and those fishmongers who buy and sell against the established law; and all those of what mysteries soever they be, who do deceitfully in their trade or mysteries.

SECT. 11.

Of hamsockne, or burglary.

BURGLARY by an ancient ordinance is a mortal offence; for the law is, that every one be at peace in his own house.

This offence is not done only by breaking of a house, but is also done by a felonious assault of enemies in time of peace, upon those who are in their houses with intent

to repose there in peace; whether the assault be to kill, or to rob, or to beat those who are in rest within their houses. And although it be that these offenders do not accomplish their purpose, if nevertheless they make any breaking by their assault of the doors, windows, or walks, to enter feloniously, they are guilty of this crime.

Into this offence fall all those who feloniously force their entry into another's house, and therein do any violence against the peace although they do not break the house, and that as well in the day time as the night; and those who disseise the people in such case, or cast them out of their houses, and out of their peaceable possessions wrongfully.

SECT. 12.

RAPE is done two ways, that is to say, of things, and of women. This offence is here put because king *E.* 1. by his statute made it mortal, which is more grounded upon the will, than upon the discretion; for one sort is whoredom, another fornication, another adultery, another incest, and another rape; but to speak properly we are to distinguish of the offences whereof the first offence is greater than the other.

Whoredom is the deflouring of a married woman feloniously.

Fornication is to ravish women not married.

Adultery is to ravish another's wife.

Incest is to ravish cousins, parents, or affines.

Rape is properly the taking away of a woman for the desire of marriage.

Rape nevertheless according to the meaning of the statute is taken for one proper word, given for every enforcement of a woman of what condition soever she be.

SECT. 13.

Of the office of the coroners.

To coroners anciently were enjoined the keeping of the pleas of the crown, which extend now but to felonies and adventures.

There are two kinds of coroners { *general* and *special.*

To the office of general coroners it belongeth to receive the appeals of all the county, of felonies done within the year; to award the exigents of contempts, and to pronounce the judgments of outlawries; and more, to enquire in what pledge they were, or decennary, or of whom mainprized, and in whose ward.

Special coroners are coroners of liberties, and of privileged places.

To the office of the one and the other it doth belong, to view the carcases of the dead by felony, or by mischance; or to see the burnings and the wounds, and the other felonies, that is to say, every one in his bailiwic; and to see treasure trove and wrecks of the sea, and to take the acknowledgments of felony, and to give the abjuration to flyers to sanctuary, and to take the enquests of felonies happening within their bailiwics.

As to the view of the carcase of the body of a man, it is his office that so soon as he shall be certified thereof, to send to the hundred of the place to summon sufficient able men of the next towns, that at a short day certainly named, they be before him at such a place, all which done the carcase is to be viewed; and if he find it there buried, that it be taken up, and to the coroner it belongeth to record the names of them who buried him; and if it hath been decreased or endamaged by ill keeping, or lain so long that it cannot be judged how it came by its death, that the same also be recorded, that this negligence be punished at the coming of the king, or his justices in Eyre into those parts; and if the coroner, with the advice of the people present be able to judge of the death, then they are to present the manner of his killing, whether he died of another's felony, or of his own, or by mischance; and if of blows, whether of a staff, or a stone, or a weapon; and the coroner is to record in his book the names of those who were summoned and appeared not, that the same offences of dis-

obedience remain not unpunished, whereby the coroner could not at that time do his office for want of jurors.

In those enquests lie no exceptions, or challenges to the persons of the jurors; but he ought to make his panels of the discreetest, and of the ablest and best of them, and to see that the carcase be buried.

The panels are to be of decinies; for coroners at these enquests, sheriffs at their turns, bailiffs at their views of frank-pledges, escheators and the king's officers of his forests, have power by authority of their office to send for the people, which none other have without the king's writ; and that is for the keeping of the peace, and for the right of the king, and for the common people.

The articles are these.

You shall by your oaths declare of the death of this man, whether he died of felony, or by mischance; and if of felony, whether of his own, or of another's; and if by mischance, whether by the act of God or of man; and if of famine, whether of poverty, or of common pestilence, and from whence he came, and who he was; and if he died of another's felony, who were principals, and who accessaries, and if hue and cry were duly made or not; and whether the men fled according to law or not, and who threatened him of his life or members, and who were sureties for the peace, or whether he died of long imprisonment, or of pain, and by whom he was

farther from life, and nearer to his death; and so of all prevailing circumstances that can come by presumptions.

And in case where he died by hurt, or fall, or other chance by the act of God, so that he had not power to speak before his death; then you shall tell the names of the finders, and of his next neighbours, and who were his parents, and if he were killed there or elsewhere, and if elsewhere, by whom, and how he was thence brought, and the value and kind of the deodand, and to whose hands it came; for in case a man dieth by a fall, in such case according to Randulf de Glanvil, *it is ordained, whatsoever is cause of his death is deodand; as it is for whatsoever moveth in the thing whereof he fell, as horse, cart, mill-stone; also vessels are sometimes deodands but not in the sea; the sums upon the horses, the goods lying in ships, mills, carts and houses, are not accounted for deodands.*

And in case of another's felony, then the jurors declare who were the felons, in what pledge, dozein, ward or mainprize they were, and from whence they came, and where they returned.

And if he was killed by false judgment, then that the jury declare who were the judges, who the officers to form the judgment, and who accessaries, and if of false witnesses, who were they, and the jurors.

And if he died of his own felony, then that they tell the manner, and the value of his goods, and the names of

his parents, and the finders, and of the neighbours, and the value of the waste.

There are nine manner of accessaries.

1 *Those who command.* 2 *Those who conceal.* 3 *Those who allow and consent.* 4 *Those who see it.* 5 *Those who help.* 6 *Those who be partners in the gain.* 7 *Those who knew thereof, and did not interrupt or hinder it by forbidding.* 8 *Those who knowingly receive.* 9 *Those who are in the force.*

Of misadventures in turnaments, in courts and lists, king *Henry* II. ordained, that because at such duels happen many mischances, That each of them take an oath that he beareth no deadly hatred against the other, but only that he endeavoureth with him in love to try his strength in those common places of lists and duels, that he might the better know how to defend himself against his enemies; and therefore such mischances are not supposed felony, nor the coroners have not to do with such mischances which happen in such common meetings, where there is no intent to commit any felony.

Coroners also ought to make their views of sodomies, and of monstrous births of children, who have nothing of humanity, or who have more of other creatures than of man; and coroners were to bury them. But the holy faith doth more and more now daily confirm men, that they abstain to commit these horrible sins which they used to do. Also they used to enquire of burnings, and who put to the fire, and how; and whether it were

by felony or mischance; and if of felony, of whose felony, and who were the principal, and who the accessaries, and who were the threateners thereof.

It belongeth to them at their views to enquire after treasure privately hidden, and found in the ground, and how the treasure was found, and by whom, and how much there was; and if it be all seised upon, or all carried away, and who carried it away, and how much; and who were the finders of it, and the next neighbours.

At their views of wrecks, they ought to enquire whether the wreck came to land, what be the things, and how much, and the value of them distinctly by parcels; and if a man, a beast, cat, or other living thing came within it or not, and that by divident it be delivered to the next town, that they may answer the lord if he come to claim it, and receive it within the year.

At his view of wounds, it behoveth him that he view the wound, and make a record of the length, breadth, and depth of it, in aid of the wounded if he complain, in case the wound be healed, the coroner of the county may help him by the record. Also it belongeth to him to view burglaries, and to enquire of the names of the felons, and what they have to live of, and from whence they came, or whether they returned; and of the menacors, and of other circumstances.

The jurors are severed into dozens, so that one dozen speak not with another, but that every jury answer by

itself, and review the presentments and the verdict, so are they chargeable, to accuse the conspirators who procure to save any offendant, or to indict an innocent in such enquests.

All the verdicts before the coroners as well of accessaries as of the principal are at the commandment of the coroners receivable by the sheriffs, and the principal and accessaries are to be taken and delivered to mainprisors, and in the presence of them and of the sheriffs their goods moveables and not moveables are to be seized into the king's hands, and by a reasonable extent and dividend, the moveables are deliverable for the finding of the prisoners, and for their needful and reasonable sustenance, and the king to be answered the residue, saving the right both to the principal if they be acquitted, and to the accessaries by mainprize.

And if any one fly, or make resistance, and will not answer the law, it is lawful for every one to kill him, if he cannot otherwise apprehend him.

And *Bermund* awarded, that all goods of those that fled should remain forfeit to the king, saving to every one his right, although that afterwards he yield himself to the peace.

And *Iselgram* said, that he is no flyer who appeareth in judgment before he be outlawed.

If any one fly to sanctuary, and there demand protection, we are to distinguish; for if he be a common thief, robber, murderer, night-walker, and be known for such

a one, and discovered by the people, and of his pledges and deziners; or if any one be convict for debt, or other offence upon his own confession, and hath forjered the realm, or hath been exiled, banished, outlawed or waived; or if any one have offended in sanctuary, or joined upon this hope to be defended in sanctuary, they may take him out thence without any prejudice to the franchise or sanctuary. But in the right of offenders, who by mischance fall into an offence mortal out of sanctuary, and for true repentance run to monasteries, and commonly confess themselves sorrowful, and repent, such offenders being of good fame, if they require tuition of the church, king *Hen.* II. at *Clarendon* granted unto them, that they should be defended by the church for the space of forty days; and ordained that the towns should defend such flyers for the whole forty days, and send them to the coroner at the coroners view. It is in the election of the offender to yield to the law, or to acknowledge his offence to the coroners, and to the people, and to waive the law; and if he yield himself to be tried by law, he is to be sent to the gaol, and to wait for either acquittal or condemnation; and if he confess a mortal offence, and desire to depart the realm, without desiring the tuition of the church, he is to go from the end of the sanctuary ungirt in pure sack-cloth, and there swear that he will keep the strait way to such a port, or such a passage which he hath chosen, and will stay in no parts two nights together, until that for this mortal

offence, which he hath confessed in the hearing of the people, he hath avoided the realm, never to return during the king's life without leave, so God him help, and the holy evangelists; and afterwards let him take the sign of the cross and carry the same; and the same is as much as if he were in the protection of the church.

And if any one remain in sanctuary above the forty days, by so doing he is barred of the grant of abjuration if the fault be in him, after which time it is not lawful for any one to give him victuals.

And although such be out of the peace, and the protection of the king, yet none ought to dishearten them, all one as if they were in the protection of the church, if they be not found out of the highway, or wilfully break their oaths, or do other mischief in the highway.

If he who is killed be unknown, in such case the coroners ought to shew the murdered cloaths, according to the statute of king *Kanute,* who ordained for the safeguard of his *Danes* whom he left in *England;* that if a man unknown were killed, that the whole hundred should be amerced to the king by the judgment of murder. Four things excuse the hundred from the judgment of murder.

1 If the felon be known who killed him, for if the felon be known, then may he be attainted of the felony.

2 Another, if the felon be apprehended, or if he fly to a monastery.

3 If the killing come not by felony, but by mischance.

4 The fourth in case where a man is a felon of himself, and because there could be no murder of a man unknown, it belongeth to the coroners to enquire in those felonies of what kindred or lineage those that were killed were, so that one may know by their parents whether they were of the *English* nation or not; for if no man could name their parents, it was great presumption that they were aliens. And thence it is that one calleth that parentage *Englishire,* where the parentage be found of the father's or of the mother's side; and if no *Englishire* be found, then that it hath the judgment of murder.

To the office of the coroners it also belongeth to receive the confession of felons in the hearing of witnesses, whereby of a grand felony done by many offenders it came to pass in the time of king *John,* that one of the offenders petitioned the king, that he would pardon him his life, for that he had accused the other offenders who were his companions, and that the king outlawed them; and at the request of the king the earls granted, that in sanctuaries only it should remain for law, that offenders having confessed the felony might accuse others, and that it was then ordained, that the coroners should take such confessions, and such appeals but once, and not many times.

Women are not admitted to bring appeals, nor infants

within the age of 21 years, no ideots, nor men professors, nor clerks indicted or appealed of any crime, nor men attainted of false appeal, nor those who are vanquished in battle, but those who have government of themselves.

The appellees are to be seised upon body and goods twice in the year, that is to say, once after Michaelmas, and another time after Easter; and because sheriffs to do the same make their turns of the hundred, such visnes are called the sheriff's turns; where it belongeth to the sheriff to enquire of all personal offences, and of all the circumstances of offences done within the hundred; and of the wrongs of the king and queen's officers, and of wrong done to the king and the common people, according to the articles aforesaid in the division of offences.

The appellees are to be seised upon body and goods as aforesaid; and if any foreigner be appealed who is out of the power of the coroner, the king's commissary is to cause him to appear, or outlaw him.

SECT. 14.

Of the Exchequer.

THE Exchequer is a place which was ordained only for the king's revenue, where two knights, two clerks, and two learned men in the law are assigned to hear

and determine wrongs done to the king and crown in right of his fees, and the franchises and the accompts of bailiffs, and receivers of the king's monies, and of the administrators of his goods, by the oversight of one chief, who is the treasurer of *England.*

The two knights usually called two barons, were for to affeer the amercements of earls, barons, and of the tenants of earldoms and baronies, so that none be amerced but by his peers.

To this place there was a seal assigned, with a keeper of it, to make acquittances upon every payment to those who desired them, and to seal writs and escheats under green wax issuing from thence for the king's revenue.

In this place there are also chamberlains and many other officers, who belong not very much to the law.

SECT. 15.

Of inferior courts.

FROM the first assemblies came consistories which we now call courts, and that in divers places, and in divers manners; whereof the sheriffs held one monthly, or every five weeks, according to the greatness or largeness of the shires. And these courts are called county courts, where the judgment is by the suitors if there be no writ, and is by warrant of jurisdiction ordinary.

The other inferior courts are the courts of every lord of the fee, to the likeness of hundred courts; and also in fairs and markets, where right is to be ministered without delay, whether the matter concern plaintiff or defendant, according to the first ordinances; in which courts they have conusance of debts, covenants broken, and of trespasses, and of such small things which pass not forty shillings value; and also they have conusance of trespasses, and forfeitures of the fees betwixt the lords plaintiffs and the tenants defendants, *Et e contra.*

There are other inferior courts which the bailiffs hold in every hundred, from three weeks to three weeks by the suitors of the freeholders of the hundred. All the tenants within the fees are bounden to do their suit there, and that not for the service of their persons, but for service of their fees.

But women, infants within the age of 21 years, deaf, dumb, ideots; those who are indicted or appealed of any mortal felony before they be acquitted, diseased persons, and excommunicated persons are exempted from doing suit, and although it be that such freeholders may do suits at inferior courts by their attornies, nevertheless the judgment is not to be given or holden for foreign; and if any plea be removed by writ of justices, replegiare, waste, or of other nature, that enable the jurisdiction from which the writ is originally sent, and returnable.

Sect. 16.

Of the sheriffs turns.

The sheriffs by ancient ordinances hold several meeting twice in the year in every hundred, where all the freeholders within the hundred, are bound to appear for the service of their fees; that is to say, once after Michaelmas, and another time after Easter; and because sheriffs to do this make their turn of hundreds, such appearances are called the sheriffs turns, where it belongeth to sheriffs to enquire of all personal offences, and of all their circumstances done within those hundreds, and of all wrongs done by the king and queen's officers, and of wrongs done to the king, and to the common people, according to the points aforesaid in the division of offences.

All freeholders within the hundred are not bounden to appear at these courts, for king *Henry* 3 excused some persons, and said, that it was not needful that archbishops, bishops, abbots, priors, earls, barons, religious persons, nay such people, nor other who were exempted to do suit at inferior courts should appear in proper person, if their appearance were not necessary for some other cause than only to make their appearance. And if any one hath divers tenements in divers hundreds, his presence is not to be excused notwithstanding the king's grant.

SECT. 17.

Of views of frank-pledges.

OF these first assemblies it was also ordained, that every hundred do make a common meeting once in the year, not only of the freeholders, but of all persons within the hundred, strangers and denizens of the age of 12 years and upwards, except of archbishops, bishops, abbots, priors, religious persons, and all clerks, earls, barons and knights, feme coverts, deaf, dumb, sick, ideots, infected persons, and those who are not in any dozein, to enquire of the points aforesaid, and of the articles following, and not by villains, nor by women, but by the affeerment of freemen at the least; for a villain cannot indict a freeman, nor any other who is not receivable to do suit in inferior courts; and therefore it was anciently ordained, that none should remain in the realm if he were not in some decennary, and pledge of freemen; it belongeth also to hundredors once a year to shew the frank-pledges, and the pledgers, and therefore are the views called the view of frank-pledges.

The articles are these.

By the oaths you have taken, you shall declare whether all they who ought, do appear or not.

If all the freemen of the hundred, or of the fees be present.

If all the frank-pledges have their dozeins entire, and all those who they have in pledge.

If all those of the hundred, or of the fees of the age of 12 years and above, have sworn fealty to the king, and of the receivers of others wittingly.

Of all blood-sheds, of hue and cry wrongfully levied, or rightfully levied and not duly pursued, and of the names of the pursuers; of all mortal offences, and of their kinds, and as well of the principals as of the accessaries.

Of all exiles, outlaws, waifs, and banished persons returned, and who have since received them, and of those who have been judged to death, or abjured the realm.

Of usurers, and of all their goods.

Of treasure trove, wrecks, waifs, estrays, and of every purpresture and encroachment upon the king, or upon his dignity.

Of all wrongs done by the king's officers and others to the common people, and of all purprestures in common places, in the land, or in the water, or elsewhere.

Of boundaries removed to the common nusance of the people.

Of every branch of the assize of bread, bear, wine, clothes, weights, measures, beams, bushels, gallons, ells and yards, and of all false scales, and of those who have used them.

And of those who have bought by one kind of meas-

ure, and sold by another kind in deceit of merchants or buyers.

Of the disturbers of framing lawful judgments, and of the framers of wrongful judgments, and of the abettors and consenters thereunto.

Of every wrongful detinue of the body of a man, or other distress.

Of every false judgment given by the view in the other hundred, or in the fee.

Of every forestalment done in the common highway.

Of wrongful replevies, and wrongful rescouses.

Of every outragious distress in another fee, or in the market for a foreign contract.

Of all bridges broken, and causeys, ways, common bridges, and who ought for to repair them.

Of the makers of cloaths dwelling out of great towns in places forbidden.

Of tanners and curriers of leather.

Of butchers, and who sell unwholesome flesh for that which is sound, and of all those who sell corrupt wine for sound wine; or beer, ale, raw and not well brewed, for that which is good and wholesome.

Of small larcenies.

Of cutters of purses.

And of those who suffer people to use any mystery for reward or fee.

Of receivers of thief-boot.

Of the makers and haunters of false dice.

Of outragious toll-takers, and of all other deceivers.

Of all manner of conspirators.

And of all other articles available for the destruction of offenders.

And the presentments are to be sealed with the seal of the jurors, so that none by fraud do increase or diminish them; and that which cannot be redressed there by these presentments, is presentable at the sheriffs first turn; and those things which the sheriffs cannot redress are to be presented by the sheriffs into the Exchequer.

All those who are presented for any offence which is mortal, and banished persons who are returned, and their receivers, and those who are not in allegiance under the king, are to be seised upon, and their goods to be seised into the king's hands.

And although it be so that the bailiff cannot hear and determine any action at the leet, nevertheless if any one present be grieved by any wrongful presentment, and complain thereof, or if the bailiff or steward have a suspicion that the jurors be in some case perjured by concealing of any offence which is presentable, or of any offender; it is lawful for the bailiffs (or stewards) by twelve more discreet men, to enquire of the truth thereof without delay, and although that the last jurors say that the first are perjured, nevertheless because that no decennary or juror is not attestable with less than two juries; and because the later jury is not taken but ex officio *of the bailiff, and not in the nature of an*

attaint, the first jurors are not to be taken attainted, but are only to be amerced.

And if any one profer himself to swear fealty to the king, he is first to be pledged in some frank-pledge and put in the decennary; and afterwards sworn to the king, and then he is forbidden to offend and commune with the offenders, and he is to be enjoined to be obedient to his chief pledge.

And to take this oath in those views is none exempted who is past the age of 21 *years, man or woman, clerk nor layman, except aliens strangers, messengers, or merchants, and those who are in custody.*

At these views of turns, and views of frank-pledges essoins hold, where the absence of those who cannot be there is excusable, and such essoins are adjournable to the next courts following, that the essoiners have their warrants.

THE CONTENTS OF THE SECOND CHAPTER.

	Section	Page
Of actions	i	73
Of judges	ii	74
Of plaintiffs	iii	75
Of rewards or fees	iv	78
Of pleaders or countees	v	79
Of attachments	vi	81
Appeals, and to whom appeal is given	vii	83
Of process of exigent in appeals	viii	85
Of gaols and gaolers	ix	86
Of bails in appeals	x	88
Of the appeal of majesty	xi	88
Appeal of falsifying	xii	90
Of appeals of treason	xiii	91
Of appeals of burning	xiv	93
Of the appeals of murder	xv	93
Of the appeals of robbery and larceny	xvi	95
Of the appeal of burglary	xvii	96
Of the appeal of imprisonment	xviii	96
Of the appeal of mayhem	xix	97
Of the appeal of wounding	xx	97
Of the appeal of rape	xxi	98
Of real offences at the king's suit	xxii	98
Of offences personal at the king's suit	xxiii	101
Of venal offences and personal suits	xxiv	103
Of the assize of novel disseisin	xxv	103
Of distresses	xxvi	113
Of contracts	xxvii	118
Of villenage and neifty	xxviii	123
Of summons	xxix	128
Of essoins	xxx	130
Of attornies	xxxi	137

CHAPTER II.

SECT. I.

Of actions.

WHEN it is said that kings and princes have the government and correction of offenders, with aid of the prelates; and to that intent they are God's vicegerents on earth, and to do the same they have jurisdiction over the offenders by pains, and chiefly those offenders which are under their jurisdiction; nevertheless kings cannot nor ought not to take notice of the offences of others without actions of accusers, which well appeareth by the example which God shewed when he was in his consistory, and demanded who was the accuser of the woman-sinner; and because none presented himself an accuser against her, to give us a perpetual example that right judgment cannot be given without there be three persons at the least, *viz.* a judge, a plaintiff, and a defendant, God said to the woman-sinner, That she should go in peace or quiet, since it belongeth not to a judge, to be both judge and plaintiff, and therefore it behoveth to speak of actions, and who are and may be judges, and who plaintiffs, and who defendants.

An action is nothing else but a lawful demand of right, and there are three manner of actions which have their introductions by writs, and by plaints in manner as followeth, *viz.* personal, real, and mixt.

SECT. 2.

Of judges.

ALL those who are not forbidden by law may be judges. To women it is forbidden by law that they be judges; and thence it is, that feme coverts are exempted to do suit in inferior courts. On the other part a villain cannot be a judge by reason of the two estates which are repugnant; persons attainted of false judgment cannot be judges, nor infants, nor any under the age of 21 years, nor infected persons, nor ideots, nor mad-men, nor deaf, nor dumb, nor parties in the pleas, nor men excommunicated by the bishop, nor criminal persons; for God when he was upon earth entered into the consistory where a sinner was to be judged to death, when God wrote upon the ground, and said to the suitors who came to judge her, *Who of you is without sin?* and there gave a judgment as an example to judges, who take upon them every day to judge the people, whereby he taught them, that none should take upon themselves so high and noble a calling, as to sit in the seat of God

to judge offenders, when they themselves are guilty and condemnable.

And those who are not of the Christian faith cannot be judges, nor those who are out of the king's allegiance; next, those who have no commission from the king cannot be judges, nor none whose authority is repealed, nor any one after judgment is given in the cause; an example thereof appeareth in the writ of right, *et nisi feceris, vicecomes faciat;* nor none after death, or the return; none whose warrant is vicious, not any one if his superior will not have him. A judge commissary hath not power to judge but according to the points, and within the words of his commission, and the original writ, no more than the arbitrary judge hath power to go beyond the points of his submission.

SECT. 3.

Of plaintiffs.

PLAINTIFFS are those who pursue their right against others by plaint.

All may be accusers or plaintiffs who are not forbidden by the law.

Infected persons, ideots, infants within age cannot accuse, or be plaintiffs without their guardians, nor criminal persons, nor an outlawed, exiled or banished

person, nor a woman waive, nor a villain without his lord, nor a feme covert without her husband, nor religious persons without their sovereigns, nor persons excommunicate, nor deaf nor dumb persons without their guardians, nor the judges of the cases whereof they are judges, nor any one who is not of the king's allegiance, so as he hath been more than forty days within the realm, except approvers who are suffered to accuse criminally people of his own condition in favour of the peace.

How lawful men ought to complain.

They ought in friendly manner to shew their offenders, that is to say, their trespassers, that they reconcile or amend themselves towards them; and if they will not do so, and the cause be criminal, then ye are to distinguish; for if any one seek revenge, then it behoved him to bring his action by appeal of felony; and if he seeketh only reparation of damages, then he behoveth to bring his action by writ, which is to contain the name of the king, and of the parties, and the name of the judge, and of the county, and the plaint in the demand, if the damages or the demand exceed forty shillings; and if not, then a plaint sufficeth without a writ. And because all suits of the plaintiffs could not be determined upon the first preferring of the suits, nor the suitors or the plaintiffs presently relieved in their suits.

Therefore kings used to go from county to county every seven years, to enquire of offences and trespasses, and of wrongs done to themselves and to the crown and to the common people; and of all wrongs, errors, and negligences of their officers, and of all false judgments; of pains pardoned or wrongfully judged, or outragiously; of outlaws returned, and of their receivers, of the values of counties out of hundreds, towns, manors, and of moveable goods which belong to the king, and to the crown; of the lands of ideots, of alienators of fees, of offences against the king's inhibition, of privileges and franchises prejudicial to the king; of bridges and highways, and of all other needful articles; and they used to do right to all persons by themselves, or by their chief justices; and now kings do the same by the justices commissaries in Eyre, assigned to hold all pleas.

In aid of such Eyres are sheriff turns needful, and views of frank-pledges, and when the people by such enquests were indicted of any mortal offence, the king used to condemn them without answers, which usage still remaineth in *Almaine;* but of pity and mercy, and because that man by reason of his frailty cannot keep himself from sin, (if he abstain not from it by the grace of God), it was accorded that no appellee nor indictee should be condemned without answer. And kings had no jurisdiction but of mortal offences, and of the rights of the crown, and of their own rights, and of the wrongs

of their ministers, and of wrongs done against common law, and common ordinances, and the articles of Eyres.

SECT. 4.

Of rewards and fees.

KINGS used to give rewards to the chief of the stock, and to all those who faithfully served them; and from the rewards of kings others took example to reward their servants; and because no freeman was bounden to serve against his will, by reason whereof none were bound to serve the king or any other but by the service of his fee, or by reason of his residence or dwelling in another fee; some are bound to serve the king for a certainty by the year. And it is not lawful for those officers who take wages certain of the king, to take any wages of the people.

But the judges who serve the king, it is lawful for them to take twelve pence of the plaintiff after the hearing of the cause and no more, although there be two judges, or two plaintiffs in one action: and the pleader six-pence, and a knight sworn a witness, four-pence, and every juror four-pence, and the two sumners four-pence.

Nevertheless in the time of king *Henry* I. it was or-

dained and assented unto, that jurors sworn upon enquest of office, as in assizes, recognizances of assizes, redisseisins, certificates of asssize, and attaints, and other the like should not take fees because they did the same *ex officio;* and to answer these monies, and the damages, are the defendants chargeable, if judgment be given against them.

And to those who followed any suit for the king's profit, and were not any of his ministers, king *Henry* I. gave to them the twentieth part of the profit with their reasonable costs. In like manner the judge was not to hear the plaintiff's cause, if he put not in security to answer his adversary's damages, if he complain of him wrongfully.

SECT. 5.

Of countors or pleaders.

THERE are many who know not how to defend their causes in judgment, and there are many who do, and therefore pleaders are necessary, so that that which the plaintiffs or actors cannot, or know not how to do by themselves, they may do by their serjeants, attornies, of friends.

Countors are serjeants skilful in the laws of the realm, who serve the common people to declare and de-

fend actions in judgment, for those who have need of them, for their fees.

Every pleader of other causes ought to have a regard to four things. 1 That there be a person receivable in judgment, that he be no heretic, excommunicate person, nor criminal, nor a man or religion, nor a woman, nor within the orders of a sub-deacon, nor a beneficed clerk who hath cure of souls, nor under the age of 21 years, nor judge in the same cause, nor attainted of falsity in his place.

2 Another thing is, that every countor is chargeable by the oath that he shall do no wrong nor falsity contrary to his knowledge, but shall plead for his client, the best he can according to his understanding.

3 The third thing is, that he put no false dilatories into court, nor false witnesses, nor move or offer any false corruptions, deceits, leasings or false lies, nor consent to any such, but truly maintain his client's cause, so that it fail not by any negligence or default in him, nor by any threatening, hurt, or villainy disturb the judge, plaintiff, serjeant, or any other in court, whereby he hinder the right, or the hearing of the cause.

4 The fourth thing is his salary, concerning which four things are to be regarded; 1 The greatness of the cause. 2 The pains of the serjeant. 3 His worth, as his learning, eloquence and gift. 4 The usage of the court.

A pleader is suspendable when he is attainted to have

received fees of two adversaries in one cause; and if he say or do any thing in despite or contempt of the court; and if he fall under any of the points aforesaid, besides the exceptions which are to the person of the pleader; for no man be a pleader who cannot be a plaintiff or actor.

SECT. 6.

Of attachments.

PERSONAL actions have their introductions by attachments of the body; real by summons and mixt actions; first by summons and afterwards by attachments.

The law requireth that offenders in case of death have not such mitigation or favour that they be brought or summoned, or distrained to appear in judgment by taking of their cattle, if the offenders be known, and notorious, and the plaintiff pursue them so soon as he may. And if any one fly for such offence, then according to the statute of Winchester he was to be followed with hue and cry, with horn and voice, so that all those of one town who can are to follow the felon to the next town; and if any such felon be attaint and convict of the felony, let him be killed if he cannot be otherwise apprehended. But it is otherwise in felonies not known, for it is not lawful to kill the offender without his answer, if he may be taken alive.

And if any one would complain to have revenge, or to drive the offender to the salvation of his soul, let him go to the coroner of the place where the offence was done, and set forth his complaint there as he will prove it, and the coroner is to cause the same to be distinctly enrolled; and if he cause him to record it as murder, being corrupted to destroy his neighbour by his plaint; so that he have judgment, the like is to be done to him if he prove not his plaint.

At the next court, after the appeal is enrolled, it belongeth to such plaintiffs to recite their appeals, and to find sureties to pursue them, or to remain in prison till they have found bail, and to the main-prisors such plaints are to be delivered by coroners body for body, that they shall pursue their appellees, and to cause them to appear in court to receive justice when they shall be demanded, if they do not prove their appeals.

The personal offences are these:

Imprisonment.
Mayhem.
Wounding.
Battery.
Perjury.
Usury.
Rescousses.
Forestallings.
Breaking of parks.

Resistance of framing lawful judgments.

Executions of false judgments, and all wrongful offences.

Carrying away of treasure trove, of wrecks, waifs, estrays.

The attachments of mortal offenders are by their bodies without sureties, and the attachments of venal personal offenders are also by their bodies, but yet they are bailable.

Real offences are those upon which are grounded writs of right, of cosinage, of dower, of right of advowson, of entry, of escheat, writs of *Quo jure,* of formedon, and of all writs, feodals.

Mixt offences are those upon which these writs are framed, *viz.* of customs and services, of villanage, of covenants, of homage, of rendering distresses, of mesne and other acquittances, of escheats, and the like, and by reason of the mixture of their introductions they are called mixt.

SECT. 7.

Appeals, and to whom appeal is given.

THE action of appeal is not given to all alike, but every one is allowed to have his action of trespass to whom any trespass is done, except such as cannot have any action at all.

Every one may have an appeal of burning to whom the damage is done, and the property of the thing burnt doth belong.

Parents, kindred, and allies, used to be admitted to bring appeals of murder; but the appeal of the wife of the killing of her husband is to be received before all other; and yet not of all his wives, but of her only who lieth betwixt his arms, which is as much as to say in whose seisin he was murdered; for if he had many wives, and all were alive at the time of his murder; nevertheless she only is admitted to bring the appeals of all the rest whom he last took to be his wife, although in right she be not his wife; and the reason thereof is, because it belongeth not to the temporal court to try, which was his wife of right, and which in fact; and the appeals of all other are to be suspended, pendant the same appeal brought.

After the appeal of the wife is the appeal of the son lawfully begotten, of the murder of his father, to be received before all other, it is said (lawfully begotten) because a bastard is not to be accounted amongst sons, for the common law only taketh him to be a son whom the marriage proveth to be so.

After the appeal of the eldest son, the appeal of the next of blood is used to be received, and so from one degree to another in the right line of coinage; and if the blood fail in that line, then they of the colateral line are admitted to bring the appeal; or the kindred

where the blood faileth, according to the degrees of consanguinity and affinity, and especially in the line of the father's side; but the appeals of murder were restrained by king *Henry* I. to the four next degrees of blood.

And if any one within the age of 21 years do bring an appeal, the defendant is not bound to answer so high an action until he hath passed that age; and therefore such appeals are to be suspended till both the parties of full age, if exception in the case be taken to the nonage.

Men and women, clerks and laymen, infants and others, of what condition soever they be, may bring appeals, except those who are not suffered to bring any actions; and although it be that many do bring appeals, yet one nevertheless is admitted to continue, and pendant that, all the others are to be suspended. And in all cases the appeals against the accessaries are to be suspended, pendant the appeal against the principal, be it one or many.

SECT. 8.

Of process of exigent in appeals.

AT the first county the coroner is to do no more but to enter the pledges who properly are main-prisors, and to command that such take the appeals, and seize all

their possessions and their goods into the king's hands, as before is said; and if they be taken, that they be kept till due deliverance be of them, and if they be not to be found, and the plaintiff come at another county, and recite his appeal or appeals, then are such appellees demandable only by their names, and by such names as they are best known by, that they appear to answer the king's peace; for if any one be appealed as son of the father, and is known by another Sir-name, the appeal is in sufficient, and by consequence abatable at the peril of the plaintiff; and at the third county they are to be demanded in like manner as before, at which county court if the appellees appear not, nor are taken into main-prize to appear at the next court, judgment is to be given against them for their contempt by the coroners; and those who do appear before judgment of the coroner, are presently to be delivered over to the gaol, where they are to be received without difficulty of fine, or request.

SECT. 9.

Of gaol and gaolers.

A GAOL is nothing else but a common prison, and as a leper, or a man who hath a diseased body, is not to be suffered to dwell or remain amongst men who are

sound; so mortal sin is a kind of leprosy which maketh the soul abominable unto God, and therefore such mortal sinners or offenders ought to be separated from the society of the people. And to the end that innocents be not infected with their offences, gaols were ordained in every county to keep such mortal offenders in, there to remain till judgment were given against them in case the offences were notorious.

There are two kinds of prisons { *common,* and *private.*

Every common prison is a gaol, and none hath a gaol but the king only.

A private prison is another prison, from whence every one may escape who can, so as he do no other trespass in the escape. None are imprisoned in a common prison but for a mortal offence, and therefore it was forbidden by king *Henry* III. That none should levy money for any escape in the land, if the escape were not adjudged before the justices in Eyre, whether for the same a corporal or a pecuniary punishment were awardable or not; and because it is forbidden that none be pained before judgment, the law requireth, that none be put amongst vermine, or in any horrible nor dangerous place, nor into any other pain; but it is lawful for gaolers to fetter those they doubt, so as the fetters weigh no more than 12 ounces; and to enable the keep-

ing of those in the gaol who are violent, outragious, or do other trespass there.

SECT. 10.

Of people bailable in appeals.

SOME appeals of mortal offences, although they are not bailable by law, nevertheless they are suffered to be bailed when they are brought into the gaol; as namely, the appeals of murder, robbery, burglary, larceny, or out of prison, where it is found that they are wrongfully appealed, and for such case was the writ *de odio et atia* invented.

Those who are condemned to have corporal punishment are not to be bailed; but it is otherwise of those who are imprisoned for a fine, or any pecuniary penalty or punishment.

SECT. 11.

Of the appeal of majesty.

OF the crimes of majesty, nor of falsifying, nor of any thing which concerneth the king's right, there lieth no appeal, but actions or indictments.

For slanders of sodomy, our ancient fathers would never agree thus for the scandals of so doing, that any one should bring actions by way of accusation, nor indictments, nor would ever assent that they should be heard of in regard of the abominableness of the sin; but they ordained, that such notorious sinners should be forthwith judged, and judgments framed against them.

Of the imagining of the king's death, and of other kind of offences of majesty against an earthly king, there were accusations but for indictments; for every true subject was with all expedition to shew the same to the king, so that he be not taken or seised upon by his long stay, or by great delay, in what cases the accusations are to be received; and in full parliament let the accuser by himself, or by a serjeant do it, according as it was done in this case in the time of king *Edmond* in these words.

Rocelyn here saith against *Walligrot,* That at such a day, in such a year of the reign of such a king, into such a place came the said *Walligrot* to this *Rocelyn,* and found him to be in counsel, and in assistance with *Arbeling, Turkille, Ballard* and others, to arrest, or to make prisoner, or to kill our lord king *Edmord,* and to do the same they were sworn to keep counsel, and to commit this felony according to their power.

SECT. 12.

Appeal of falsifying.

THIS offence is not openly done, it is seen by a false writ, or false money found in one's possession, and although that three persons are necessary in judgment in this case, nevertheless it is ordained, that the possessor of ill things be by the judge *ex officio* driven to answer to the title of their possession thereof, which is not so in all cases.

And if there be any one who will not plead to judgment, then he is to be returned to the gaol, and all his goods are to be seised into the king's hands, and to be seised upon as in all criminal actions brought by appeals or indictments; also in venal actions such contumacers used to be condemned for not pleading, as by their pleading and lawful attainder.

And if any one saith that he came to the money lawfully, and doth not know by whom, nor none offer themselves against him to prove the affirmative of the action; then it belongeth to the possessor of the money to prove the affirmative of his answer.

And if any one saith, that it came to him from a man certain, let it be as after herein is said.

SECT. 13.

Of appeals of treason.

TREASON is set forth in appeals in this manner according as it is found in the rolls in the time of king *Alfred.*

Bardulf here doth appeal *Dirling* there for that, that in as much as this same *Dirling* was the ally of the same *Bardulf,* the said *Dirling* came such a day of the year, etc., and during the alliance ravished the wife of the same *Bardulf,* or counterfeited his seal; or did him some other mischief. Or thus; *Hakenson,* father, or other parent, or lord, or ally, this *Dirling* killed; or thus, remained in aid, and in counsel with *Daffray,* the adversary of this *Bardulf,* in speech which touched the loss of his life, or members, or of his earthly honour; or thus, discovered his counsel or his confession; or thus, whereas he ought to have a lawful inrolment according to law of such a plea, the same *Dirling* falsely inrolled the same to his dis-inherison, or otherwise to his damage; or thus, whereas he was his attorney in such a plea, before such judges to gain or lose, and should have done him right, he lost by his default, or by his folly, negligence or collusion, or restored the thing in demand, or did him such hurt. Or thus,

whereas he should have excused him, or essoined him such a day, etc., he suffered him to lose the possession, or such other thing through his default; or thus, whereas he ought to have truly spoken for him in such a case, the said *Dirling* did ill advise him, or speak against him in such a point; and afterwards thus, this treason did the said *Dirling* feloniously as a felon, and traitorously as a traitor, and if he will deny it, *Bardulf* is ready to prove it upon him by his body; or as a mayhemed man, or a woman, or a clerk ought to prove.

And although that advice be given to some, that it belongeth not to the plaintiff to shew the proof of his action, until it be denied of the adverse party to hasten right, nevertheless such usage is suffered, as in this case following, and others it is; as, if any sheriff or other, take one to be bail or surety for another, and he denieth it, it behoveth the plaintiff to say that he wrongfully denieth it, and therefore wrongfully; for in such a year, such a day, and before such a one, of his own will he became pledge for such a one, and the plaintiff to hasten his business suffered to shew the same in his declaration, and if he denieth it, etc., the answer of the adverse party is suffered to be taken, and afterwards he is to go to proof by his replication.

SECT. 14.

Of appeal of burning.

THE appeals of burning are in this manner; *Cedde* here appealeth *Harding* there (which he sir-names) for that, that whereas this same *Cedde* had one house, or divers; or a stack of corn, or of hay, or a mill, or other manner of goods in such a place; or thus, whereas *Wetad,* father or mother of this *Cedde* was in such a place such a day, etc., the same *Harding* came thither, and put fire into the house, and burnt the said *Wetad* therein, whereof he died; and this felony the said *Harding* did feloniously.

SECT. 15.

Of the appeal of murder.

OF the offence of murder, the appeals are such; *Knotting* here appealeth *Carling* thus; that where *Cady,* father, brother, son or uncle of this *Knotting* was in God's peace and the king's, *scil.* in such a place, the same *Carling* came thither, and the same day and year, etc., with a sword, or other kind of weapon run him

through the body, gave him such a wound, in such a part of his body whereof he died; this murder he did upon malice forethought feloniously, etc., or thus, with a hatchet, or with a stone, or a staff struck the said *Cady* upon the head, or elsewhere, of which stroke he died such a day, at such a place, etc., or thus, that where the same *Cady* was hurt, in such a part of his body, of a curable wound; or had such a sickness, or curable disease, and put himself to curing of this *Carling,* who said he was a physician; the said *Carling* came, and took upon him the recovery of the said *Cady,* who by his folly, negligence, etc., feloniously killed him; or thus, so long delayed his deliverance, whereby he killed him; or thus, hung him, or feloniously killed him, or falsly judged *Regicald* who first attainted the twelve jurors, witnesses, who wrongfully hanged *Gordian* her husband by 24 jurors, who afterwards by several appeals hanged the first 12 jurors; or thus, pained him so much to make him confess, and to be an approver, that he falsly acknowledged himself to have offended, and made him to appeal innocents of crime, so that it lay not in *Carling* that the same *Knotting* was not adjudged to death; or thus, whereas the said *Knotting* lay mayhemed upon his bed, and was reckoned so young, or so old, or so sick that he could not go, the said *Carling,* came and carried the said *Knotting* from such a place, such a day, etc., to such a water, ditch, marle-pit or desert, and therein threw him, and so left him without

help or sustenance, so as he did as much as lay in him, that he was not there dead of famine; this mischance he did unto him feloniously, as a felon, etc.

SECT. 16.

Appeals of robbery and larceny.

THE appeals of robbery are these; *Ofmond* here aplealeth *Saxemond* there, that whereas this *Ofmond* had a horse of such a price, the said *Saxemond* came such a day and robbed him of his horse, etc., or of such a garment of such a price feloniously, or of two oxen of such a price, or other kind of goods of such a price, etc., he received the said goods so stolen, or was aiding, or consenting thereunto.

Of larceny thus: Armelwolde here appealeth *Oskerrill* there: that whereas he had such goods, namely, etc., he feloniously, and as a thief stole them away.

In these actions meet two rights, the right of the possession, as of the thing robbed or stolen out of his possession who had no right in the property, as of things taken from the bailee or lessee; and the right of the property as it is of a thing stolen or robbed out of the possession of him who hath the property in the thing.

SECT. 17.

Of the appeal of burglary.

OF burglary are these appeals; *Athalf* here appealeth *Colgrum* there; that whereas the said *Athalf* was in such a place in peace, etc., thither came the said *Colgrum,* and with force and arms assaulted his house, and in such a part brake it, or did such like other violence feloniously, etc.

SECT. 18.

Of the appeal of imprisonment.

OF the appeal of imprisonment thus; *Darling* here appealeth *Wiloc* there; for that whereas the said *Darling,* etc., the said *Wiloc* came and arrested the said *Darling,* and brought him to such a place, or at such a day, and put him into the stocks; or in irons, or in other pain, or inclosure, from such a day until such a day, etc., or thus, contrary to sufficient bail offered by him, in a case bailable detained him, or after judgment given for his deliverance from such a day to such a day, this felony he did feloniously, etc.

SECT. 19.

Of appeals of mayhem.

APPEALS of mayhem are these; *Umbred* here appealeth *Maimawood* there; for that whereas the said *Umbred,* etc., the same *Maimawood* came and made an assault upon him of fore-thought malice, and armed in such a manner, cut off the foot, or the hand of the said *Umbred,* or with such a staff struck him upon the head whereby he pierced the scull of his head, or with a stone struck out his three fore teeth, whereby he mayhemed him; this mayhem he did feloniously, etc.

SECT. 20.

Of the appeal of wounding.

OF wounding are these appeals; *Barnings* here appealeth *Olif* there; that whereas the said *Barnings,* etc. the said *Olif* with such a weapon struck him, and wounded him in such a part of his body, which wound contained so much in length, so much in breadth, and so much in depth; and this wound he gave him feloniously.

SECT. 21.

Appeal of rape.

AN appeal of rape is in this manner; *Arneborough* here appealeth *Atheling* there; for that whereas the said *Arneborough,* etc., the said *Atheling* came, and with force cast her down, and in despite of her, feloniously ravished her; and because that every rape used not to be holden for a mortal offence, no appeal was thereof, if therein she did not say, and took away her virginity.

SEC. 22.

Of offences real, at the king's suit.

THERE are many who seek not absolution, notwithstanding they have offended against the king mortally; and therefore because the king is bound *ex officio* to compel them to salvation, the king used every seven years to go through all shires in his realm, to make enquiry according as before is said; further, in aid of such Eyres were coroners, sheriffs turns, views of frankpledges and other enquests to enquire of those offenders as is said.

But because some are wrongfully slandered, king *Henry* I. ordained, that none should be arrested nor imprisoned for slander of mortal offence, before he were thereof indicted by the oaths of honest men, before those who had authority to take such indictments, and then they were first to be seised upon by their bodies, and goods, as in appeals, and to be kept in prison till they cleared them of the infamy before the king or his justices.

Of the crime of majesty in no kind was any indictment but of heresy or Romery, whereof if any were indicted and brought to judgment, let there be an indictment for the king by some of his people in this manner, according to that which is found in the rolls of ancient kings.

I say *Sebourge* there is defamed by good poeple of the sin of heresy, because that he of evil art, and belief forbidden, and by charms and enchantments he took from *Brighten* by name, etc., the flower of his ale, whereby he lost the sale thereof, so that judgment be not given of less than three persons; or thus, *Molling* who is there defamed by good people, that such a day he denied his baptism, and caused himself to be circumcised, and became a Jew, or a Saracen, or offered or sacrificed to *Mahomet* in contempt of God, to the damnation of his soul; and this offence he did feloniously, etc., and so in every like case for the king; and if he will deny it I am ready to prove it upon him for the

king, as to the king it belongeth to do; that is to say, according as an infant within age.

Of falsifying thus; I say for the king, that *Mimunde* there is defamed, etc., for that he such a day, etc., falsified the king's seal, or his money, in such a kind, or such, etc.

Of trespesses indictments now cease; of burnings thus, I say, etc., that *Seabright* there is defamed, etc., for that at such a day, etc., he set a fire such a house or goods, etc.

Of murder thus, I say, etc., that such a one, with such a weapon struck *Agole* in such a part of his body, by which stroke he is killed, etc.

The degrees of accessaries are to be shewed after the principals according to their right.

Of larceny in this manner; I say, that *Cutbert* there, etc., robbed such a man known, or unknown of his horse, or of other kind of goods, etc., or feloniously stole, or was consenting to the offence of such thieves known, or of unknown thieves by taking of thief-boot which is a receipt of larceny, which he wittingly took to suffer such a one to pass, or to stop suit, or wrongfully to procure his pardon.

SECT. 23.

Of offences personal at the king's suit.

A PERSONAL offence is divided into two branches, whereof the one extendeth to persons, and the other to goods.

The venial offence which extends to persons is dividable into great offences, and small offences; and although the king have conusance of all offences yet he reserveth only the ordering of all gross offences to himself, and the conusance of the lesser he leaves to all those men who have courts within their demesnes; and upon this division of offences hath the king established the peace, so as such lords and bailiffs have the ordering of the peace for small offences.

The venial offences personal are these; perjury when one telleth a lie against the king; and perjury of his officers, the mortal offences not declared feloniously, as imprisonment, mayhem, wounding, battery, are to be shewed without appeals, alienation of old treasure found, disseisin, re-disseisin, and many others; the declarations of personal offences, venials, infamatories, are to be declared at the king's suit in this manner.

I say for our lord the king, that *T.* there is perjured, and lieth against the king; that whereas the said *T.* was the king's chancellor, and was sworn that he should

not sell nor deny right, nor remedial writ to any plaintiff, the said *T.* such a day, etc., and sold to such a one a writ of attaint, or other remedial writ, and would not grant it him for less than half a mark, etc., or thus, whereas he was one of his judges assigned, and was sworn to do justice, etc., he in this manner, in such a court gave judgment, or awarded against such a party, or released such a party, or usurped such jurisdiction upon the king; or made himself judge, coroner, or sheriff, bailiff, or other minister of the king's, without warrant; or thus, whereas he was chancellor of the Exchequer, etc., he forbad to give an acquittance of so much as such a one had paid of the king's debt under the Exchequer seal, or delayed to give an acquittance from such a day till such a day, and would not give an acquittance unless he bought it for so much; or thus, for that he holdeth plea against the king forbidding, or in prejudice of the king and his crown, and the rather seeing it belongeth not to any ecclesiastical judge to hold secular pleas, but only of testamentary and of matrimony; or thus, he disturbed the giving of judgment, or surceased so to do justice by negligence, or by his consent.

In this manner are the presentments to be made at the king's suit, of personal wrongs of all his ministers great and small; and also against all others not his ministers, of all wrongs done to the king by those who have sworn fealty to him.

SECT. 24.

Of venial trespasses, and personal suits.

To those who have cause of action, and will not pursue revenge according to their rights, by actions of trespass to recover damages for the trespasses; nevertheless ye are to distinguish where the trespass is done to the person of a man, and where to his goods.

And if to a man's person, every one may have an action to whom the trespass is done, except those who can maintain no action without their guardians.

And if to the goods, then ye are to distinguish whether to his proper goods, or to the goods which he hath with others in common.

And if to the proper goods, then to distinguish if proper to a man, or belonging to another thing, as to the crown, or to any church.

If to a man, then to distinguish if to a man free of himself, or to a man who is in ward.

And if to a man free of himself he hath several actions, and if proper to any other in ward, the action belongeth to the guardian.

If to a man in ward, the action belongeth to the guardian, or to the next of kin, parent, affine or ally of his name, to the use of him who is in ward.

Of goods which are in common no several action lieth,

and therefore of goods which belong to men of religion, the action belongeth to the sovereign of the house, in his name for him and his covenant, or in his own name, and the name of him who is in his custody, if the action be an action personal, venial.

And there is a difference betwixt actions which are to cause death, and pardonable actions, for as much as to mortal actions the suit is to be brought first against the principals, and afterwards against the accessaries; and in venial actions of personal trespasses, all ought to be comprehended in the plaint in common, the principals, the commanders, the conspirators, and the accessaries, for as much as a man shall not recover several damages by several plaints thereof; nevertheless none of the accessaries is to plead to the action before the principal hath pleaded, or be condemned for his contempt.

Personal trespasses used to be heard and determined in inferiour courts of lords of fees, and then the offenders were attachable by their bodies, and they used to keep them and bring them to judgment, if they were not bailed, without offending the law.

The remedial writ of trespass requireth bail to them, which whosoever could not find was to remain in custody without his keeper, because they were bound to acquit their pledges.

And if any nevertheless become pledges of their own will in such cases, they are to be taken; but if they are

thereby endamaged by non-suit of the party, they had no recovery against the principal surety; a pursuing may be in divers manners, sometimes by pledges, as it is of those who can find them; sometimes by trusting them, as it is in case of foreigners and poor, who have not ability to find pledges; and sometimes by the bodies of the plaintiffs, as it is of appellees, who have no other sureties but the four walls of the prison.

And for the dureness which is used to be done to the bodies of offenders in personal offences, or venial, king *Henry* I. ordained, that they should arrest them first by their bodies, until they justify themselves by bail, and if they be not found, and if they do not discharge their bail, they are then to be distrained by their lands to the value of the demand, and if they then make default, their lands are to be delivered over to the plaintiffs, until they have made satisfaction by a reasonable extent, if before they have not acquitted themselves by law.

Of pledges, note that those are pledges for pursuing who the plaints affirm, and those are pledges who reprieve any other thing besides the body of a man, for they are not properly pledges, but main-prisons, because they suppose that those plevisables are delivered to them by bail for the body.

The ordinary declaration of venial plaints begins in this form; I shew unto you who am here, that *E.* who is there, wrongfully delayed his action, by false essoin

which he cast such a day, in such a place, etc., to the great damage of the plaintiff.

And of trespasses done against the king's peace it is easy to shew, and of trespasses done against lords or bailiffs, and in hatred of false plaints, king *Henry* I. ordained, that audience were forbidden to plaintiffs in venial actions, and that none was bounden to answer such actions, if they had not present proof of a lawful suit.

And there is such a difference between a criminal action in pleading and a venial, that if a serjeant put these words, *scil.* (feloniously as a felon, etc.) in declarations of venial actions, the declarations are vitious and abateable, because that no judge hath power by a venial plaint to determine felony; and in the same manner is the count vitious and abateable, where the count is upon the right of property, and upon the plea of possession, *Et e contra,* and there are some actions wherein no declaration or count; as in disseisin, re-disseisin, certifications of assize, false judgments and attaints.

SECT. 25.

Of assize of novel disseisin, and re-disseisin.

AMONGST other personal trespasses, it is not to be forgotten to make mention of disseisin, of which it is

needful first to see to the title, why it is called *assise of novel, disseisin.*

An assize in one case is nothing else but a cession of the justice, in another case it is an ordinance of certainty, where nothing could be more or less than right, for the great evils which are used to be procured in witnessing, and the great delays which were in the examinations, exceptions and attestations, *Randolphus de* Glanvile ordained this certain assize, that recognitions should be sworn by 12 jurors of the next neighbours, and so this establishment was called assize. In the third case assize is taken properly for an action in four manner of pleas possessories:

Scil.
- *Novel disseisin.*
- *Mortd'ancestor.*
- *Darrien presentment.*
- *Juris utrum.*

But such assize are called *petit* assizes, to make a difference from grand assizes, for the law concerning fees is grounded upon two rights, of possession, and property.

And as the grand assize serveth to the right of property, so the *petit* assize serveth to the right of possession, and because such *petit* assizes are to be taken of the counties where the fees are, by the statute of king *Edward* called such actions, assizes, either for the general cession of the justices, and of others, or from the proper names of such actions.

It is called *novel* to put a difference from those which are ancient, for anciently kings used to go over the shires to enquire, hear, and determine offences, and to redress the wrongs there, and that which was not brought in such Eyres of personal trespasses before remained to the judgment of God alone; and afterwards by reason of the multitude of offences, and that kings could not do all by themselves, therefore they sent their commissaries who now are called justices in Eyre, who have not power to decree and determine a personal offence, but for a thing brought and not determined in the last Eyre; then for as much as the disseisin, or the personal action was brought before the Eyre, the action or disseisin was ancient; but if the disseisin be done since the last Eyre, then it is a novel disseisin.

Disseisin is a personal trespass, of a wrongful putting one out of possession, it is said wrongful, to put a difference from rightful, which is no offence; as if I take from my wife, or my villain, or from another who is my ward, that which is my own; or if you take from me that which is mine I take it from you again, I do not offend; for I am warranted so to do by the law of nature, seeing this usage is common to men, beasts, fishes, fowls, and other earthly creatures, but I cannot do so afterward; for if I take from you forcibly any thing whereof you have had the peaceable possession, I do disseise you, and I do wrong to the king, when I disseise him of his right, or use force where I ought to

use judgment. On the other side, that which is taken from me by the rightful judgment of any judge, ordinary, or arbitrary, is not taken wrongfully from me.

Wrong is here taken as well for deforcement or disturbance, as for ejection.

Deforcement, as if another entereth into another's tenement, when the rightful owner is at the market, or elsewhere, and at his return cannot enter therein, but is kept out, and hindred so to do.

Disturbance is, as if one disturb me wrongfully to use my seisin which I have peaceably had; and the same may be done three ways.

1 As when one driveth away a distress, so that I cannot distrain in the tenement liable to my distress, whereof I have had seisin before.

2 Another is where one doth replevy his distress by the sheriff, or the hundred wrongfully.

3 As if one distrain me so outragiously that I cannot manure, plow, or use my land duly; in which case it maketh one an outragious distrainer to disseise, or for to eject the tenent; as if any one eject me out of my tenement, whereof I have had peaceable possession by discent of inheritance, or other lawful title to the possession.

Note that all right is in two kinds, either in right of possession, or in right of property, and therefore the right of property is not so determinable by this assize,

as is the known possession, or as that which altogether favoureth of a possessory right.

The remedy of disseisins hold not of moveable goods, nor of any thing which falleth not into inheritance, as land, tenement, rent, advowson of a church, and a house of religion, franchises, and the appurtenances, and such other rights, whether they are holden perpetually in fee, or for term of life, or years, according to the contract, as well as the land mortgaged to such a one and his heirs, until so much be paid to such a tenant or his heirs.

Ejection of a term of years falleth into the assize, which sometimes cometh by lease, or bailment, or loan, and sometimes by right of wardship by the nonage of some heir, and to the recoverer it belongeth to hold them according to the contracts.

Villanage in some case falleth into this assize; as to free-tenants who are ejected or disturbed to continue their seisin of lawful presentments, and whereof a bargain is made betwixt any donor and any purchaser, and although that the purchaser cannot present living the clerk of the donor instituted into the church; the title nevertheless of contracts barreth not altogether the donee, so that afterwards he cannot present against the form of the contract, and if he do the donor falleth into this assize, and the bishop who gave the institution to him who is not presented, by him to whom the right of presentation doth belong in his own name.

Into this assize also fall donors and purchasers, who make vicious contracts of lands and possessions, as also it is of guardians, and of farmers who lease their lands for a longer time than their term endureth, in prejudice of the lord of the fee, or of him to whom the reversion belongeth, as it is of those lessors who have fee-tail.

On the other side fall into offence those the king's officers, and others who disseise a man, or a corporation of their franchises, whereof they have the inheritance by lawful title, if not through the default, abuse or negligence of those, or of their bailiffs, to whom the franchises belong.

Into this offence also fall all attornies, who yield up the inheritance, or freehold of their clients in judgment, and the justices also who yield to them, and the tenants also, for it behoveth not attornies to lose their clients rights, but it behoveth them to defend them till a rightful judgment be given.

Into this offence fall all those who commit any waste, exile or destruction in lands, as that which is not justifiable by law, as those who assign over lands to others, where in the feoffments to themselves, or their ancestors there is mentioned but of heirs only, and that may be two ways, *viz.* to heirs general, or to special heirs, named as in fee-tail, or not named, as in frank-marriages.

This action all persons may bring, men, women,

clerks and laymen, infants and others of what condition soever they be, who are not forbidden by the law.

It is forbidden to villains to bring this action without their lord, for as much as they are in the custody of their lords, in the same manner to some coverts, and to others who are in ward, and to those who were never tenants in their own names, but in the name of the lord.

The law also denieth the suit to those who have withdrawn themselves from the same action in judgment, or have released or quit-claimed their right.

And note, that *retrahere, et sub-trahere* is not all one, *retrahere* doth acquit a man from those things which are in his writ, or in his action; but neither the one nor the other can utterly bar him, if he do not openly declare the same; but *subtrahere* withdraw his action, every plaintiff may do either by himself or his attorney, whether he be present in court or absent, and altho' it be that one will not pursue his action, yet he doth not so bar himself, nor withdraw himself, but that he may have a new writ, and a new plaint, if he do not openly in judgment say, that he withdraweth his action; these remedies hold against a disseisor, and where there are many, against all those who appear in the force, or in the aid.

SECT. 26.

Of distresses.

ANY action rightfully grounded upon a personal trespass, accrueth to people wrongfully distrained, which is called a distress; and because that none can cover his robbery or his larceny by distress, it is first to be known what is the division of distresses.

2 Who may distrain.

3 When, and of what things a repleve lieth.

A repleve is nothing else but a reasonable distress.

A reasonable distress is to the value of the thing in demand without any other fault, so no outragious distress is termed lawful.

There are two manner of distresses, a dead distress, as of corn, wine, and other such chattels; and a live distress, as of a man, a beast, and of such like things.

No man can distrain, who is not warranted so to do by law, or by some other special deed.

1 By the law, as for damage feasance, and for debts and contracts of foreigners; for foreigners are distrainable by their moveable goods, and summonable because they are not free tenants in the places where they are distrained; and for (as well) a debt recovered as any other, and so for amercements of damages, and arrearages of accompt, or other thing.

2 By deed, as if you grant me any annuity, and do grant me to distrain in the lands for the arreagages of the same, or other service, and bind your possessions which are not of my fee in whose hands soever they come to a distress.

When and what things a man may distrain.

A man may distrain cattle or other things so soon as he finds them damage feasant, and not the day after, and after the time of payment, and not before, and not every day; and in the night a man may not distrain, but only in the day time, but for damage feasant; for before sun rising, or after sun-set, no man may distrain but for damage feasant, where a man may distrain in places, or lands within the see, liable to distress and not elsewhere.

Of what goods a distress may be.

Of all goods which the law forbiddeth not; the law forbids that a man shall not distrain within the view, where he may have a sufficient distress in an open covenable place.

A covenable dead distress is not by armour or vessels, by robes or jewels, by writings if there be found another distress sufficient in itself.

A covenable live distress is not to be of sheep which

art gelt, muttons, of dogs, birds, fishes, or by savage beasts when there is a sufficient distress found of other cattle.

A distress is to be carried, led, or driven away at the will of the distrainer, and in case any distrainer find out any distress but within some inclosure, in such case he can do nothing, but to shut up the goods inclosed, and so sequester them without doing any other violence, and if a man break up such pound, or the locks of it, or part of it, he greatly offendeth against the peace, and doth trespass to the king, and to the lord of the fee, and to the sheriffs, and hundredors, in breach of the peace, and to the party, and to the delaying of justice; and therefore hue and cry is to be levied against them, as against those who break the peace.

A dead distress found in a covenable place, nor a live distress is not to be led or driven out of the manor, or out of the hundred, or out of the county, nor to be put in any pound or elsewhere, where he to whom the goods are belonging cannot have fight of them, but is to be put into such a place where the distress, and he who is the owner may be least endamaged.

There are two kinds of leading of distresses.

1 One when a man leads away a live distress against sufficient gages and pledges.

2 Another, when one will not suffer himself to be

distrained lawfully, and the one and the other are personal trespasses against the peace.

And then if any be wrongfully distrained, ye are to distinguish whether it be by those who have power to distrain or by others.

And if by others, then lieth an appeal of robbery, whereof *Hailif* gave a notable judgment; and if by those who may distrain, then they ought to deliver the distress by gages and pledges.

And if the distrainer, and the plaintiff of the distress lead it away, then the conusance thereof doth belong to the king's court, and so there is remedy by a writ of replegiari facias.

Nevertheless, for the releasing of such distresses, and for the hastening of the right, *Randulf de Glanvile* ordained, that sheriffs and hundredors should take sureties to pursue the plaints, and should deliver the distresses, and should hear and determine the plaints of tortious distresses, saving to the king the suit, as to the leading, etc.

Two things fall in these plaints; plaints of taking, and of detaining; whereof there are four degrees.

1 Where the taking is justifiable for lawful, and the detaining also, as for a debt due, or debt recovered.

2 Where both are wrongful (as) such as are disavowable both in the taking and detaining.

3 Where the taking is lawful, as in damage feasant,

and the detaining tortious, as against sufficient gages and pledges tendered.

4 Where the taking is tortious, as in a pound, and the detaining lawful, as for a debt confessed, and of no more have the ordinary judges conusance; but in case where the plea begins by writ, conusance ought to be made of the taking; of the detaining lieth remedy by an assize of novel disseisin.

The taking and the detaining are sometimes by parties known, and sometimes by parties unknown, but although the persons are known, nevertheless the names of the detainers ought to be known; and according to that the avowant, or the plaintiff or his bailiff if he be not present, ought to frame his declaration, and the plaint jointly against the persons, and against the detainers, or severally against one of them, and if against them both, then thus; *A.* wrongfully took, and caused to be taken, by such a one known, or unknown, etc., and drove, and carried away, etc., and wrongfully doth detain from him, etc., against gages and pledges, and is yet seised thereof: or thus, wrongfully detained from such a day till such a day, that he delivered the same to the king's bailiff to his damage, etc., for these words (and yet is thereof seised) leaves it to them, that they cannot have sight of the distress, and to those who detain the distress by avowry of property.

SECT. 27.

Of contracts.

A CONTRACT is a speech betwixt parties, that a thing which is not done be done, of which there are many kinds, whereof some are perpetual, as those of matrimony; others are temporary, as of bailments, and leases; and one kind is mixt, as of exchanges, which sometimes are for a time, and sometimes for ever; and one special kind is an obligation.

And because the law doth not intermeddle with every contract, we are to see who may contract, and of what things contracts may be; every one may make contracts with all persons who is not forbidden by law.

The law forbiddeth that none contract with the enemies of the king of heaven, nor with the enemies of their earthly king; nor with any mortal offenders, nor with those who are not of the Christian faith, nor with outlaws, nor waives, nor with those who are known felons, nor excommunicated, nor with any who are in ward, if not to the profit of those who are in ward; nor with deaf, nor ideots, nor madmen, nor appellees, nor persons indicted of crime.

Of what thing a contract may be made.

Of all things not forbidden by law. The law for-

biddeth that a man do not make contract of the right of another, although he offend not; the law forbids contracts of usury, disseisin, hurting of the body, disinheriting, and of other offence or vices.

Contracts are forbidden which are to the damage of the party gaining, by vice, by forbidding mixture of offence.

Contracts are vicious; 1 sometimes by intermixture of offence; 2 sometimes by intermixture of ill-belief; 3 sometimes when they are made against that which is absolutely forbidden; 4 and sometimes by false supposition.

In the first case, as if I contract with you, that if I do not such a thing, or such a thing, that it shall be lawful for you or another to kill me, or to wound me, or imprison me; or of usury, that you shall not demand of *C. for* 100 *l.* 5 *l.* or other thing, etc.

In the second, as if I give, or deliver, or leave a thing with you in hope that you will re-deliver the same to me again, and you detain this thing from me; or if I devise in my will, that you shall sell some of my tenements to pay my debts, or to do other things with the money, and you being my executor, keep this money for ever to your own use, without doing of it; or if I sell, change, deliver a lease unto you to have so much of you at such a time, and you keep from me that which you promised.

In the third case, as if I make any contract with

those with whom it is not lawful, nevertheless the contract of matrimony is not forbidden betwixt infants, although it be used to be, but in case of disparagements; for disparagement is an offence which is greatly forbidden.

The fourth case, as of charters, or other kinds of muniments; as it is of charters, and feoffments made in the seisin of the donors, and of charters of quit-claim made out of the seisin of those who have them; for no charter, no rent, nor gift remaineth good for ever, if the donor be not seised at the time of the contract of two rights, of the right of possession, and the right of property; and as a charter supposing a gift to be made without difference is void, so is the quit-claim of a thing whereof the maker of the deed is not in possession of the thing quit-claimed.

And as the charters in the cases aforesaid are nothing worth, so also are the warranties, and whatsoever belongeth to such estates, which are without force by virtue of such false supposition.

On the other side, suppose that a single deed be false, which testifieth the gift to be returned to the donor, or to his heirs, or in any other manner of condition; for a gift is always simple, and not of the same affection of the giver as to the right of the gift, that the thing given should remain to the purchaser without hope of reversion.

A single deed is a muniment without indenture, and

therefore the law requireth, that escripts, testimonials of contracts conditional, supposing a reversion be indented, and chirographed.

Contracts are supposed false in taking homage in deceit of the law; as if I take your homage for other service than for the service issuing out of the tenure *de Haubert.*

The law forbiddeth also, that none let not take any land, nor fee, nor possession, nor term of years to come above the term of forty years, nor that any contracts be made in fee farm for ever, nor for years, rendering more rent by the year than the fourth part of the value; nor that any be endowed of advowsons, nor any alienation of advowsons be made out of the blood, if not in perpetuity, or fee-simple; nor that an advowson be partable amongst parceners, but that it remain entirely to the next heir of the ancestor, or that there be any lease for years left, or fee-tail thereof, for the advowson of a church is so much in the spirituality that there can be no alienation thereof, but in fee-simple.

In rights of contracts of bailment, and administration of other goods and monies, it is lawful for every one wisely to dispose of his goods to whom he will; and therefore it is advised that every one have bailiffs, or officers who he conceiveth do well understand the manor, and if he be endamaged by any servant, or other hurt, that it be accounted his own folly, seeing he took not sufficient surety of their faithfulness and discretion;

and *e contra,* for against him who hath nothing the law giveth no recovery, nor other remedy but revenge; nevertheless if there be any such bailiffs who will not render a true account to his lord, he is chargeable thereunto by a writ of account, which is a mixt action if he have wherewith to justify himself; and if he be not distrainable, nor a freeholder, and deceiveth his lord, and will not render an account for such disobedience, he shall have the said action personal mixt.

And according to the change of the natures of the actions, the forms of the remedial writs are changed.

And although that such for their contempts are banished for a time. or for ever, yet is no man to be outlawed, or imprisoned for the same; but if any be in arrearages to his lord, ye are to distinguish thereof if he have any thing, whereof satisfaction may be made by judgment, to the example of a debt recovered, or otherwise.

SECT. 28.

Of villanage and niefty.

AN action of villanage and niefty is a mixt action, grounded upon a personal trespass done to another, when a man prosecutes a freeman to enslave his blood.

This action is a mixt action in favour of liberty, for

very seldom will any one depart from his lord's manor, if he claim not himself to be a freeman.

This action hath introduction, by summons, and attachments of the lands.

A waive is nothing but a villainess, and notwithstanding that according to the law of nature all creatures ought to be free, nevertheless by constitution, and by the deeds of men, (are) they and other creatures enslaved, as it is of beasts in parks, fishes in ponds, and birds in cages.

The villanage of man is a subjection of such great antiquity, that by the memory of man no free stock can be found thereof; which slavery according to some is the curse which *Noah* gave to *Caanan* the son of *Cham* his son, and to his issue, and according to others of the *Philistines,* who became slaves at the battle which was betwixt *David* and the children of *Israel* of the one party, and *Goliah* the Philistine on the other part.

And as other creatures are kept in inclosures, so are villains kept to guard the possessions of their lords, and from thence are said regardants; and so men are villains by the law of God, by the law of man, and by the canon law.

From *Shem* and *Japhet* come the *gentile* Christians, and from *Cham,* the villains which the Christians may give away, or sell as they do other chattels, but not devise by will, because they are astriers, who are annexed

to the frank-tenement, and of them there are many others.

Those are villains who are begot of villains and neifs in servitude, whether born in matrimony or out of matrimony; those also are villains who are begotten of villains, and born of free women in matrimony, and those are villains who are begotten of a freeman and a nief, and born out of matrimony.

The other manner of villains are those who are adjudged villains by a writ of *nativo habendo,* and their issue after them.

Villains become free many ways; some by baptism, as those *Saracens* who are taken by Christians, or bought and brought to Christianity by grace.

Some became free by the Pope, as it is of those villains who by bishops are ordained into orders of deacon, and above; but notwithstanding the same a man shall not lose his right thereby who will sue for them.

On the other part villains become freemen if their lords grant, or give unto them any free estate of inheritance to descend to their heirs; or if the lord take their homage for their land, or if the lord eject them out of their fees and give them sustenance; or if he put them in a common prison if it be not for crime.

A woman after she is put in possession by her lord, is never again to be challenged as a nief, notwithstanding she be sold.

And if the lord suffer his villain to answer in judg-

ment without him in a personal action, or to be a juror amongst freemen, as a freeman knowingly, and without the lord's claim; the villain hath this plea to the villanage if he return not of his own accord.

Also a villain becomes free through the lord's default in a writ of *nativo habendo*, as by his non-suit in the writ.

Also by proof of a free stock, or to have been born of free parents.

Also by the lord's grant in court, and also by prescription; also by default of proof, and also by the lord's negligence, as by the remaining of the villain within a city, or upon the king's demesnes for a whole year; or if wittingly he suffer his villain to be a suitor in another court, or to be sworn in assize, or elsewhere amongst freemen; if a villain depart from his lord claiming free-estate, so that he cannot seise him within the manor within the year, or out of his fee, nor after his writ of *nativo habend,* brought, it belongeth to the lord that he bring again that action which is *vice-counsiel,* and pleadable in the county, by summons and distresses of his lands; for the law requireth that he do right and use not force.

The parties being brought to judgment in the county court, and the action being declared in, the defendant by way of exception may plead that he is frank, and because that a free estate is of a higher nature than villanage; therefore because the sheriff hath not power

to try so high a plea by the writ of *nativo habendo,* those writs and such pleas are suspendable till the coming of the justices in Eyre into those parts; but if the king command not to the contrary, those pleas are not adjournable but from one county court to another.

Note that all villains are not slaves, for slaves are said regardant, as before; they can purchase nothing but to the lord's use, they know not in the evening what service they shall do in the morning, nor any certainty of their services; the lords may fetter, imprison, beat or chastise those at their pleasures, saving to them their lives and members, these may not fly, or run from their lords so long as they find them wherewith to live; nor is it lawful for others to receive them without their lords consent; those can have no manner of action against any man without their lords, but in case of felony; and if those slaves hold lands of their lords, it is intended that they hold them from day to day at their lords will, and not by any certain services.

* Villains are tillers of lands, dwelling in upland villages, for of *vill* cometh villain, of borough *burgess,* and of *city* citizen; and of villains mention is made in the great charter of liberties, where it is said, that a villain be not so grievously amerced that his tillage be not saved to him; but the statute maketh no mention of slaves, because they have nothing of their own to lose.

And of villains are these tillages called villanages.

* Note, by villains in this place is meant copyholders.

And note, that those who are free, and quit of all servitude, become servile by contracts made betwixt the lords and the tenants.

And there are many manners of contracts of fees, as of gift, of rent, of exchange, and lease, which all may make for a time, or for ever, and quitment without obligation, and charge of service, and with charge.

And these contracts (as all other) are made by writings, charters, and muniments, by solemn witnesses, according to the example of contracts of marriages, which ought to be a pattern to all other contracts; according to which example were the first contracts made by the first conquerors, when the earls were enfeoffed of the earldoms, barons of the baronies, knights of knights fees, serjeants of serjeanties, villains of villanages, burgesses and merchants of boroughs, whereof some received their lands without obligation or service, or in frankalmoign; some to hold by homage and by service, for defence of the realm, and some by villain customs, as to plough the lords lands, to reap, cut and carry, his corn, or hay, or such manner of service, without giving of any wages, whereof many fines were levied of such services, which make mention of the doing of these base services, as well as of other more gentile services; and although so it be, that the people have no charters, deeds, nor muniments of their lands; nevertheless if they were ejected, or put out of their possessions wrongfully, by bringing an assize of novel disseisin, they

might be restored to their estates as before, because they could aver, that they knew the certainty of their services, and works by the year, as those whose ancestors before them were astraies for a long time, in case disseisors were not their lords.

And thereupon St. *Edward* in his time, caused enquiry to be made of all such who held, and did to him such services as ploughing his lands, etc., besides their lawful customs.

And afterwards the people less fearing to offend than they ought, many of these villains by wrongful distresses were forced to do their lord the service of rechat of blood, and many other voluntary customs, to bring them in servitude under their power for which their remedy was a writ of *ne injuste vexes.*

SECT. 29.

Of summons.

THIS chapter maketh mention of special summons, to make a difference from general summons, where all freeholders and others ought to come according to the nature of the cry whereof, and every one may summon by a common cry; but of this summons this chapter maketh not mention.

A special summons is a friendly admonition of an

amendment of an offence, or wrong; and because none is tied to answer to any action real or mixt before a summons, therefore it is to fee;

1 Who have authority to summon.
2 Who are summonable.
3 In what place he is summonable.
4 How far one is summonable.
5 At whose charges.
6 How often.
7 Who may be summoners.
8 What is a reasonable summons.

1 All who have jurisdiction, have authority to summon.

2 All those who are not forbidden by law are summonable, none is to be summoned for a personal offence, nor any one who is not a freeholder.

3 A man is not summonable in all places, for no man is summonable, nor bounden to receive summons out of the fee of the party who causeth the summons, nor elsewhere but in the manor appendant to such a court where he ought to answer, nor in all places of the manor, but only at the tenement in demand.

4 How far one is summonable; not out of the fee of the court where one is to answer.

5 At whose charges? At the charges of those who are the first causers of the summons, except in juries and enquests taken *ex officio;* for no freeman is compela-

ble to travel, and appear in judgments at his own charges, notwithstanding that the law requireth that every tenant obey the summons of his lord.

6 How often one is summonable; but once in one cause, nevertheless re-summoned holdeth place in some case.

7 Who may and ought to be summoners; no man is compellable to be a summoner if he will not agree to it; nevertheless all those may be summoners who will, that are not forbidden by the law. Women, nor villains, nor infants, nor any infamous person, nor any one who is not a freeholder cannot be a summoner.

8 It is a reasonable summons, when it is testified by two loyal free witnesses, neighbours to the person, or to the house, or tenement contained in the writ, with warning given of the day, place, party, judge of the cause, and a reasonable respite, at least of fifteen days to provide his answer, and to appear in judgment. In juries nevertheless, nor enquests there need not be so full time or respite given.

SECT. 30.

Of essoins.

ESSOIN is an excuse of a default by any hindrance in coming to the court, and lieth as well for the plaintiff as for the defendant.

The law of every essoin is, that the cause of the hindrance be enrolled with the name of the essoiner, so that if the adverse party, or his attorney, or essoiner, will traverse the cause, he is to be received so to do, that if it be found false, then that the essoin be turned to a default.

All those may be essoined who are not forbidden by law; no defendant in personal actions, nor any after default can be essoined, nor any present in court; nor doth essoin lye in a *scire facias,* nor in a *venire facias,* nor in a *recordari facias loquelam,* nor in admeasurement of pasture, nor after the parties have joined issue in judgment though the jury appear not; nor in case where the plaintiff hath not found surety to pursue his action, nor where one hath attorney in court, if both be not essoined, nor where the summons is not testified; nor after an essoin not warranted, nor to him who was not named in the writ, or in the plaint, except in warranties; nor any one who is re-summoned in mortd'ancestor and darrein presentment, nor when the day is to come, nor where the essoiner cometh too late, nor any one whose adversary is dead, or any of his parceners, nor he who is adjourned from day to day, nor the king's officer as officer, nor he to whom it is commanded that he appear if he please.

No essoin is justifiable if it be not orderly cast, nor is it allowed to infants within age, nor to any who is

in custody, nor to many having one right, if the cause be not divers.

All may be essoiners whom the law forbiddeth not; it is forbidden to women, to infants, to villains and to all who are in custody; to madmen, to ideots, to excommunicated persons, to the judges, and to the parties in the cause, to be essoiners at other times not warranted, or attainted of false delays; to criminal persons, and to those who are not of the Christian faith, or in the king's allegiance, it is forbidden that they be essoiners.

There are chiefly two kinds of essoins; the one of the king's service, the other of hindrance.

The first is dividable, either into the service of the king of heaven, or of the king on earth; of the king of heaven in three manners.

1 Either for the general passage of all to the land of, etc.——————————————and this essoin is not otherwise adjournable, but that the parties go without day, and are to appear again by re-summons of the plaintiffs, at the return of the defendant. This essoin is not allowable to plaintiffs, nor to the defendant reasonably summoned before his going from his house in a personal action, nor in other, but in a plea which toucheth inheritance; nor but in a writ of right patent, but not of dower, nor of burgage.

The other essoin of the service of the king of heaven, is of a common pilgrimage beyond sea, towards the

holy land, and this lasts for a year, this holds not but according as the other.

The third, of a pilgrimage beyond sea, as to *Rome*, or to Saint *James de compostella*, and take place for half a year, and these essoins are to appear the next courts following the terms adjourned.

After re-summons holdeth place the common essoin *de mal venire*, and also after the term of adjournment; but this common essoin never holds place before the essoins before said.

The essoin of the king on earth's service is in two manners.

1 The one is of those who serve as soldiers, as messengers, or as ministers; and this essoin is not respited but from court to court, or the common day, to the example of a common essoin, if it be not warranted at the next court by the king's writ, it is to be turned to a default.

2 The other is of those who serve the king by tenure of their land for the defence of the realm, and he hath no day; but the plaintiff is without day, and the plea is to be recontinued in the same estate when his adversary shall be returned.

These latter essoins are allowable in pleas, summonable to plaintiffs and defendants, except in dower *unde nihil habet, yuare impedit*, darrein presentment; nor to women, nor to infants, nor to ideots, nor to deaf, nor to dumb, nor madmen, nor to any in custody, nor to

any who is not free of himself, nor to any attorney, as attorney, nor where the essoiner acknowledgeth the cause in judgment to be false, nor after any *cape,* nor after distress in the land.

After the essoins of the king's service lieth an essoin of *malo veniendi,* but not *e contra.*

The essoin of disturbance or hindrance is dividable, either of sickness, or of some other hindrance, as of those who coming towards the court are taken by the king's enemies, and so hindred; or by waters, bridges, or enemies discovered, or by tempests, or other reasonable disturbance, so that they have not power to appear at the day.

The essoin of hindrance and sickness is dividable, either of languishing which is called *de malo lecti,* and that holdeth place for a year; or of sickness in the journey, and that holds not but to the example of a common essoin; in these essoins of hinderance are essoins *de malo veniendi.*

This essoin lieth after every summons, and general re-summons upon pleas, except to jurors, and those who are summoned for the commonwealth.

But of adjournments it is to distinguish; for in the Eyre of justices, the adjournment is for three days, or four at the most, or less according as the places are near, or contain, and to this essoin is respited fifteen days at the least.

The essoin of sickness in passage lieth before the essoin *de malo lecti,* and also after the year of the lan-

guishing, and it lieth before appearance, and after appearance, except in four assizes; and where it lieth in actions it holdeth in warranties.

This common essoin is not allowable in the cases aforesaid, but once after the parties have joined issue, nor after the parties have agreed to appear without essoin, nor where a bishop is commanded that he have or cause such a person to appear, nor there where many claim by one right, or are tenants of the same right, nor to a man and his wife, nor to all the parceners; but if a man dieth without heir after the writ purchased and brought, the writ is thereby abatable, because at the day of the date the plaintiff had no action against the other parceners which are alive, as to that of the party.

This common essoin lieth as well for infants where they are impleaded of their lands, as for men of full age.

And as the same is allowed to the tenant, so is it warranted where no sickness is adjudged; this essoin is allowable from day to day, according to the common adjournments in writs of right, till the sickness be judged, if the tenant rise not before from his sickness; nevertheless none can do it in such a case if not with the plaintiff's leave, or by the command of the king, if the plaintiff will not give him leave.

This essoin holdeth in the writ of droit patent sent to the lord of the manor, and in a writ of droit close of lands holden of the king in *capite,* and in the writ of customs and services, after that the deforceor hath

pleaded, and said that the battle or the grand assize may be joined.

The essoin *de malo lecti* is in court for two years when the sickness turns to weakness; this essoin lieth not for the plaintiff; and after the sickness adjudged, it is adjournable by a year of respite to the court of London.

Weakness lieth not in any writ of right after appearance, but where battle may be joined, or the grand assize.

This essoin *de malo lecti* was never allowable to any attorney, nor to any but those who had a warrant before the common essoin cast by the tenant, nor to any after the weakness adjudged, nor without rising; nor in *justicies,* nor in the writs *de quo jure,* nor *de rationabilibus divisis,* nor *quo warranto,* nor customs and services before that the court be certified that battle might be joined, or the grand assize.

This essoin of *de malo veniendi* is called *de malo villæ,* and this lieth in case where one appeareth the first day in judgment, and is suddenly taken with sickness in the town, that he cannot the next day appear in court.

This essoin may be cast the second day by one, the third day by another, and the fourth day by a third; in which case the judge ought to receive the attornies of those who are sick, but this essoin lieth not but there where the essoin *de malo lecti* lieth.

SECT. 31.

Of attornies.

BEFORE a plea put into court by essoins, by attachment, or by appearance of the parties, none is to be received by attorney, no more than a plea is removeable out of court into a higher court, where the plaint or the writ is not brought; nor any is to be received by attorney in a plea which was, nor in a plea which shall be, but only in a plea which is pendant in the county court, or elsewhere; or is brought by the king's writ, and this plea be afterwards removed into a higher court; by this removing the attorney is not removed, for no attorney is removable unless he whose attorney he is, come into the court in proper person and remove him, if not in case where one hath general attorney, for general attornies may appoint special, and remove them; nor any can receive attornies after the plea brought but the king, or other warranted by a special writ, if not in the presence of the parties.

All may be attornies which the law will permit; women may not be attornies, nor infants, nor villains, nor any who are in custody, or any other who is not free of himself, nor any who is criminous, nor any who are not sworn to the king, nor any in any personal action, nor in an account, nor in *nativo habendo;* plaintiffs, notwithstanding they have attornies, in personal actions are not to appear, nor answer in judgment by no attorney, but he disseiseth his client when he doth it.

THE CONTENTS OF THE THIRD CHAPTER.

	Section	Page
Of exceptions	i	139
What is exception, and the division and order of excepting	ii	140
Exceptions dilatories	iii	141
Of exception of clergy	iv	142
Exception of bigamy	v	143
Exception of the power of the judge	vi	144
Exception to the person of the judge	vii	146
Exception of time	viii	146
Exception of place	ix	147
Exception to the person of the plaintiff	x	148
Exception of prison and of ward	xi	148
Exception of summons	xii	149
Exception of vicious counts	xiii	149
Exception of approvers	xiv	152
Exception to indictments	xv	153
Plea to treason	xvi	154
Pleas to burning	xvii	155
Pleas to murder	xviii	155
To larceny	xix	156
To burglary	xx	157
Of rape	xxi	157
Of imprisonment	xxii	158
Of mayhem and wounding	xxiii	158
Juramentum duelli	xxiv	169
The order of battle	xxv	170
Exception of personal trespass	xxvi	171
Of purprestures	xxvii	173
Of treasure trove	xxviii	173
Of wrecks	xxix	173
Of usury	xxx	174
Of driving	xxxi	174
Of obligation	xxxii	175
Of attaint	xxxiii	175
The ordinance of attaint	xxxiv	176
Of oaths	xxxv	178
Homage	xxxvi	178
Fealty annexed to homage	xxxvii	179
Common oaths	xxxviii	179
Of final accords	xxxix	180

CHAPTER III.

SECT. I.

Of exceptions.

IT behoveth the defendant to answer the plaintiff's declaration, and because the people commonly know not all the exceptions in pleadings; countors are necessary, who know how to advance and defend their clients causes according to the rules of law, and the customs of the realm; and the more needful are they to defend them in indictments, and appeals of felony, than in personal or venial causes; and the better to help our memory, which every day inclineth to forgetfulness, it is necessary to shew what is an exception, and the division of it, and the order of excepting, or pleading; for some account them guilty who plead not, or plead ill, or not sufficiently; for example, if any one vouch one to warranty, and judgment pass (if he tell not the year, or before what judges the judgment passed) it is as if he had said nothing; and so of other cases, and although a plea be requisite, nevertheless every one is not received to plead; for some are admitted to plead

without tutors in all actions, and some not, but in felonies.

Every one may answer without a tutor who is not forbidden by the law.

The law forbiddeth married women to answer without their husbands, but then we are to put a difference in the cases; for if she be within the age of one and twenty years, she is not admitted to plead in any case without her husband, but in case where her disinheriting, or that which doth amount to as much, doth appear by the malice, or negligence of her husband; and if she be of full age, then she shall so answer alone in cases of death and felony; and so it is of men within the order of religion, and of villains, and of all those who are in custody, and are not delivered.

SECT. 2.

What exception is, and the order of exception, or plea.

A PLEA of exception is a thing alledged for answer, either to delay or bar the action.

And there are two manner of exceptions, dilatories, and peremptories.

The order to plead is such, that the peremptory plea is in the highest degree, for the dilatory may have a recourse to the peremptory, but not *e contra*. And of

dilatories some are principal, and some are secondary, and from the secondaries there is no recourse to the principals, and according to their degrees are they put in, partly to help our remembrance.

And some exceptions are in counts, in replications, and rejoinders, and so forth, until the truth be cleared in the proceedings of the pleas, whereby one may surely come to give clear judgments.

Voucher to warranty lieth not in personal actions, although that averments by record, and muniments, and witnesses availeth.

SECT. 3.

Exceptions of dilatories.

THERE are many dilatory exceptions, whereof the first is to the judge, and that many ways; one unto the power of the judge, and that may be in two kinds, by reason of the two kinds of jurisdictions, or because the king or his judge delegate hath no power, or conusance in the cause, as it is of the person of a clerk, by reason of the privileges of the church; or because the ordinary judge hath not power or conusance of a thing done out of his jurisdiction, nor any one within a franchise of a thing done in guildable, nor kings, nor those of one country, or of one land, of things done in another land or country.

SECT. 4.

Of exception of clergy.

FOR the privilege of clergy; as if a clerk be ordered in court before a lay judge to answer to an action for a personal trespass, and especially in a case criminal and mortal plead that he is a clerk, the judge hath no further conusance of the cause, for the church is so enfranchised, that no lay judge can have jurisdiction over a clerk, though the clerk will acknowledge him for his judge; and in such a case he is without delay to be delivered to his ordinary.

Nevertheless, to give actions to plaintiffs against the accessaries in appeals and indictments, it belongeth to the judge *ex officio* to enquire by the oaths of honest men, in the presence of the clerk, whether he be guilty or not, and if he be guilty thereof, then he is without delay to be delivered to his ordinary, and the plaintiff shall sue against the accessaries in the king's court, and in the spiritual court against the clerk, and the clerk after his due purgation made, shall without delay have all his lands and moveables delivered to him.

SECT. 5.

Replication of bigamy.

THE exception of clergy is sometimes counter-pleadable by a replication of bigamy in this manner:

Sir, he ought not to enjoy the benefit of this privilege, for he hath forfeited the same by the sin of bigamy, as he who hath married a widow, or many wives; and note that matrimony is the lawful order of joining together of a Christian man and woman by their assents; and as of the deity and humanity of Christ there is made an undissolveable unity; so was matrimony, and according to such unity was such coupling found to be, and therefore none can remain in that unity who takes to himself a plurality; and of a plurality ariseth this offence of bigamy, which offence draweth clerks nearer the lay power.

And note that bigamy may be two ways; one by a plurality of wives, as he who marrieth two wives or more, the one after the death of the other, or outliving the other; the other is plurality of husbands as well as wives, as it is of a widow who suffereth herself to be married to another man, whether her widowhood came by the death of her husband, or by divorce; and because it belongeth to say in what point a clerk is bigamus, the bigamy is triable in the lay court; if nevertheless

the jury doubt thereof, then the ordinary is to certify the same at the command of the king, as in the case of matrimony when it is denied. On the other side, a clerk is incounterable by other replications, as he is for being a murderer, or a notorious liar, or of such a condition as the church is not to protect him against the king's peace.

SECT. 6.

Exception to the power of the judge.

AGAINST the power of the judge the defendant may help himself by other dilatory pleas in this manner; Sir, I demand the sight and the hearing of the commission, whereby you claim jurisdiction over me; and if the judge do not deny it, or cannot shew it (notwithstanding that no judge delegate is compellable to shew his power), yet may the party plead thus; Sir, I appeal from this commission, because it maketh no mention of the cause for which I was brought to judgment, or not of that point; or because you have no conusance in such a point; or because it is vicious; and that may be divers ways, as if it be not sealed with the king's seal of the chancery; for none is tied to yield obedience according to the laws and customs of the realm to the king's privy seal, or to the seal of the Exchequer, nor

unto any other seal, but only to the seal which is assigned to be known of the common people, and especially in jurisdictions and original writs, if not for the king only. Or it may be vicious because the seal is counterfeited or falsified, or because the king is not named in the writ, he not being out of the kingdom, nor in ward; or because the writ containeth summons in the action where it is personal, or attachment where the action is mixt or real, or because the seal is not fastened to the parchment, but one may remove it, and take it from it at his pleasure; or because the writ was brought too late, or too soon; or because it hath rasure, or interlining, and diversity of hands, and of words, or false Latin; or because the writ is written upon paper, or parchment which is forbidden; or for default found in the writ, as the omission or transposition of a word, syllable or clause, as it is of abatable writs; or because the king died before the writ was brought, or because the writ is false in the day of the date, or because the commission requireth the association of one who is not present; or because the writ was never sealed, or because the fact was not done within his jurisdiction, or in a place not there determinable, or because the judge hath not power or conusance either of the quality or the quantity of the thing.

SECT. 7.

Exception to the person of the judge.

ALTHOUGH the writ be good, and the power be sufficient, yet there holds dilatory exceptions to the person of the judge (as it is said) of such persons who cannot be judges.

SECT. 8.

Exception to the time.

OTHER dilatories there are of time, of place, of hours, of manners, etc.

And note, there are three manner of times exempted from pleas, in which no parties sit in courts to give judgments, whereof two are by law, and the other at the will of the king.

One time containeth two months, *viz. August* and *September,* which are assigned to gather in the fruits of corn, etc.

The other times containeth the feasts, and the Sundays, which are appointed festivals for the honouring of God, and the saints, which feasts are these:

1 The day of the birth of Christ, of St. *Stephen,* of

St. *Silvester,* and the epiphany, and the purification of our lady, Easter week, of the rogations, which contain three days; of the ascension, of Pentecost, of the nativity of St. *John* the baptist, of the twelve apostles, of St. *Lawrence,* and of the assumption of the mother of God, and her nativity, of St. *Michael,* and of All Saints, and of St. *Martin,* with all such feasts which all bishops hold festivals in their bishopricks, for that they are canonized; besides these the days of relicks, of the annunciation of the mother of God, and of her conception, and of the invention of the cross.

And note, that whereas God commanded to keep holy the Sabbath day; it was ordained, after the resurrection, that we keep holy the Sabbath days.

The third time is forbidden by the king's proclamation, of hours may arise dilatories, for after the hour of noon, or in the night, no plea is to be holden.

SECT. 9.

Exception of the place.

OF the manner arise dilatory, for in riding, nor in walking, nor in taverns, nor elsewhere, but in known places for a consistory can any court be holden.

SECT. 10.

Exception to the person of the plaintiff.

OTHER exceptions dilatories arise from the persons of some plaintiffs, as it is of those persons who are rebukeable of accusations. Other exceptions dilatories rise from the persons of the pleaders, or of the attornies, or of the essoiners, for none can do that by his attorney which himself cannot do, nor can any be an essoiner, attorney, or pleader who may not be a plaintiff.

SECT. 11.

Exception of person, and of his custody.

OR he may take exception against his own person, and say that he is not within the king's power, or if he be imprisoned for a greater offence, or appealed or indicted of crime, or of a higher crime; or he may say, that he is not bound to answer thereunto, for as much as he is not brought to judgment by a right course, which willeth that no man may be attached by his body, when he is distrainable by his lands or other goods, if not for a personal offence.

Or he may say, that he is not tied to answer to any

action which toucheth loss of life or member, or right of property, until he be of the full age of one and twenty years or more; and there are other dilatories of the persons of the answerers, which appear before.

SECT. 12.

Exception of summons.

IN pleas of summons he may say, he ought not to answer, because the plaintiff holdeth no suit of distress, nor hath any other manner of proof present; or because the plaintiff hath not found sureties to pursue his plaint, or because he was not summoned, or not reasonably summoned, or that he received the summons by no freeman, or but by one freeman; or because he was summoned too late, or because he was never summoned, what thing to answer to, or because he was not summoned against the plaintiff.

SECT. 13.

Exceptions of vicious counts.

As writs which are vicious are abateable, so also are vicious appeals; as if the appeals be not brought within the year after the felony done, or not before the coroner,

or not in the county where the offence was done, or not in a right place, or for variance, or for omission, or interruption, or because the plaintiff is barred against others in the same appeal.

Sometimes it happeneth that the thing which is robbed or stolen is found in the possession of a true man, against whom the owner of the property, or of the possession frameth his appeal, as he who is a robber of another, in which case there is a difference; for if it be found that such a thing was given, sold, or delivered to him without collusion, in such case the possessor is acquitted, or at least bailable until the next coming of the justices; and when the justices come, the first possessor thereof is to be arrained, and he may shew how it came to him; nevertheless if he would vouch one to warrant it he cannot, nor deny the title of his possession, but in the name of voucher he may say, that it came to him by lawful title, as that he bought it in such a market, or in such a place, without mentioning of whom; and the sheriff is thereupon to cause a jury to be impanelled, and if the answer be found true, then he is acquitted, and if not, then to be condemned as before, as if the plaintiff had proved the felony.

And if any one appear, and justify the thing to be his, he is not to be received as a party, but the cause is first to be tried betwixt the two firsts, and afterwards he may make the estranger a party if he will; and if the case be that the buying was within a place within

a franchise, and the sheriff return, that he cannot execute the writ by reason of the franchise of such a man, or of such a place; in such case the sheriff is to be commanded that he forbear not by reason of the franchise, but that he enter and execute the writ.

And if the possessor saith, that he came to the thing from a man certain, and he be present, and will maintain the same without collusion, he is to be admitted thereunto, and the other is to be discharged; and if he deny the contract, this affirmative, and this negative are triable by battle or jury; nevertheless at the king's suit the possessor ought to make title to the possession, or clear himself thereof; for two things are necessary, conscience for us, and fame against others.

And that which is said of making of title to the possession of things, in case where a false writ, or false money, or larceny, or thing lost, or estray, or other hurt is found at the king's suit, although that the last possessor acquit himself of the felony; if the plaintiff nevertheless prove the thing to be his, as of his possession, or stolen from another, or otherwise lost, the law is, that he recover the thing without any payment for it.

Or he may have exception dilatory to a vicious deed, for variance betwixt the words of the writ and the nature of the action, and the count, as if he have omitted to charge me, or if he charge that in the count which was not to be in that action, as felony in a venial action.

And as the defendant hath a dilatory exception to

abate a vicious count, in like manner hath the plaintiff a replication against the defendant upon a faulty answer; but because none is to be judged for not answering in appeals of felony, it is sufficient for every one to deny the felony generally, though he answer not particularly to every word mentioned in the appeal.

And in cases venials, where the defendants say nothing in excuse of that which is offered against them in judgment, they are to be adjudged and condemned as not answering at all; in the same manner it is where one answereth not duly, or insufficiently.

SECT. 14.

Exception to approvers.

To an approver one may thus answer; Sir, I am a true man, sworn to the king, and within a frank-pledge; and this approver is a felon attainted by his own confession, and out of the king's protection, and by consequence out of the king's peace, whereby he hath lost his free voice, and lost every right, and every action, so as he is not to be admitted in any action, no more than a man who is outlawed by judgment.

Or he may plead, that he ought not to answer him, because he did not appeal him in his first appeal, or not before the coroners, and if the approver cannot help

himself by this replication, as to say, that he is not any way out of the king's protection; the defendant is bound to answer him, but he is not to be delivered to the free-pledges where he is in the decennary; or to other main-prisors until he be appealed or indicted.

SECT. 15.

Exceptions of indictments.

THESE exceptions hold to indictments; Sir, I demand sight of the indictment, whereby I may take exceptions against the persons of the indictors, or to the form of the indictment, for no villain can indict any man.

Or if the indictment be not made by the whole dozein of freemen, or by others who cannot indict any man.

Or if the indictment be not sealed with the seals of the twelve jurors, or that it is not the record of judges authorized thereunto; or if the indictment hath not been within the year, or by people of credit, and of good fame, no man is bound to answer to such an indictment.

Nor if the indictment hath not been made within the neighbourhood of the same county, also if the indictment be general, for a general slander defameth no man, nor is he compelled to answer thereunto; as if the indictment be, such a one is a murderer or a thief, or

wicked, without alledging any particular offence therein, for to the common fame of the people an indictment ought to give no credit or belief.

Or he may say, that the justices went the Eyre after the felony done, where nothing was moved of this felony.

SECT. 16.

An answer to treason.

DARLING here denies all treasons and felonies, and whatsoever is against the king's peace.

And as to the consideration he may say thus; Sir, notwithstanding the joint alliance betwixt us by homage sometimes before this time, nevertheless when he counted that I should commit this treason, I had yielded up to him all the lands which I held of him, or I lost them by judgment, or by disseisin, which the plaintiff did to me, or he appointed them to come to others; in which case the felony is barred, and the plaintiff is condemnable.

And as to the consideration of present fealty he may say, that this alliance the plaintiff forfeited against him in such a point, or such a point; such fealty issued out of such lands whereof the defendant was not then tenant, neither in demesne nor in service.

And to the alliance of curtesy he may say, that such benefit was not to continue but until a time past before the time named in the appeal, for afterwards he paid him nothing of such pension, or other curtesy but by judgment had against him, and in despite of him; or thus, before the time named in the appeal he yielded up to him his deed of the pension, or released the same unto him, or quit-claimed the same whereby the alliance was destroyed.

SECT. 17.

Burning.

To burning he may say, that the mischief came by mischance, and not of a premeditated felon.

SECT. 18.

Murder.

To an appeal of murder he may plead, that the action belongeth not to such women as the wife of the plaintiff, because he was not killed in her arms, or in her seisin. Or thus, Sir, the plaintiff is to have no action, for as much as there is one nearer of blood who hath brought his appeal, and is a person of ability so to

do; or he may say, that he is not bounden to answer in *England* unto an act done out of the realm, if the thing concern not the king's right, as his person, or his inheritance; nor in a privileged place where the king's writ runneth not of an act done in a foreign place, nor *e contra* in a franchise, of an act done in guildable; or he may say, that he did it not feloniously, but by mischance, or by a lawful judgment; or thus, not against the peace as a fugitive, or as a known felon, or as one who was not within allegiance to the king at the time of the killing.

SECT. 19.

Robbery or larceny.

To an appeal of robbery or of larceny he may plead, that he wrongfully bringeth this appeal, for as much as the plaintiff brought an action of trespass against the same persons of the same before such judges; and if any one would cover his larceny by colour of avowry for an estray, or a waif, in such case it behoveth that he shew forth a title allowable for such a franchise; but this exception is counter-pleadable by his peremptory replication; Sir, such avowry ought not to be of any force, because he presently carried away the estray, or waif so found, or changed it, or sold it, or killed it, or

put it out of the view, or from the knowledge of the neighbourhood; whereas he ought to have publickly cried it in three markets and monasteries next adjoining, and keep it in a common place for a whole year.

To the exception of distress holds this replication; Sir, such avowry ought not avail him, because he was not a known bailiff in such a hundred; or because he did not any thing in the manner of a distress, as not in a due time, nor had any warrant, but took it in the night time, or in such other manner feloniously robbed him, and stole, etc., and in the like manner may a replication hold against a robbery made by colour of disseisin.

SECT. 20.

Of burglary.

To burglary he may say that he entered into the tenements without doing any felony, and not against the peace, as into his own demesne and freehold.

SECT. 21.

Of rape.

IN appeal of rape he may deny the felony, and say that he ravished not her against her will, but that she

assented, and that appeareth because she conceived by him at the same time, and there is no presumption that she was ravished against her will by fouling of her garments, nor shedding of blood, nor hue and cry made, or other manner of violence offered.

SECT. 22.

Of imprisonment.

To the appeal of imprisonment he may say, that he did it by force of a rightful judgment of such a judge; but to that plea is this replication good, that after there came a warrant to him to deliver him, he kept him in prison for the time named in the appeal.

SECT. 23.

Of mayhem and wounding.

IN mayhem he may demand the view thereof, for he cannot lawfully complain when there is no mayhem to be judged of; and of appeal of wounding in the same manner. By the death of the king all pleas are suspended, all gaols opened, no judge, bailiff, or other officer ought to intermeddle therewith for want of war-

rant, and all outlaws, and all waives, and those who have forjured the realm, and all banished persons used then to return, except those who were exiled and banished for ever; and if any recovered before for that he could not have debt, if he were not justified to the peace; and if he be brought to judgment, and if he be accused of outlawry, he may say that he is discharged of the outlawry by the king's grant; or he may say that the outlawry ought not to prejudice him because he was under the age of 21 years at the time of the outlawry, and therefore that he was not outlawed for the felony.

Or because the felony was not done in such a county, or because he was not outlawed in *England,* or not within the king's dominion where the writ runneth; for an outlawry pronounced against a man in the bishoprick of *Durham,* or elsewhere in the land where the king's writ doth not run, shall prejudice as one in the land where the king's writ runneth, *nec e contra.*

Or because the felony was not done in the time of this king, or not since the last Eyre in that county; or because the process of the outlawry was false, by a false warrant, or without any warrant, or because he lay sick, and was essoined *de malo lecti,* or because he is alive for whose death he was outlawed; or because he was imprisoned the day of the outlawry, or because he was in the king's service in the Holy Land, or within the realm for the profit of the commonwealth.

Or because he had the king's protection, or because he was a madman, or an ideot, or deaf, or dumb, or professed in religion; in which cases if he pray to be received to answer, he is to be received.

And the plaintiff was to be demanded, and it was to be proclaimed, that if any one could shew why he should not be enlarged, that he appeared at a certain day.

All parties in judgment are necessary to be present, and they are to have Oyer of the writs, of the original, the plaintiff's commission, the quantity or the quality of his plaint. And the disseisor or their bailiffs, every one of them for himself may say in this manner, he may answer and say for himself, that he hath not done any wrong or disseisin, nor hath any thing in the tenements put in the plaints; and he may so answer, and so of others till it come to the tenant in whose name the disseisin was; and he may answer and say, that he is not in by disseisin, but is in by *D.* who enfeoffed him who is not named in the writ; and it may be that *D.* entred by *E.* and so there may be many, according to divers feoffments betwixt the first disseisor and the tenant, in which cases no voucher to warranty holdeth place for a personal trespass, and therefore every one is well to look not to make a contract of a vicious thing, and that he take caution, and such surety in the contract that he may have a recourse to recover if he lose the thing; and therefore the lords used to keep their manors that none could enter by intrusion, disseisin, or by

other vicious bargains, nor otherwise unless the bargains were entered in their full courts, whereby the lords could not have received their enemies into their manors, nor have taken their homage against their wills, nor any used to enter before they have found sureties to restore to the purchaser or his heirs the value of the thing, if by rightful judgment it belonged to him after his thing lost for the offence of alienation, or for his power of this warranty.

To the principal disseisor it belongeth to have a regard, if the plaintiff put more into his plaint, that he answer not but to that which he may avow; he may say, that there is variance betwixt the original and the commission; or that the writ is vicious, as it is in misprision of names, or sur-names.

Of names, as *Renand* for *Harrand, Margery* for *Margaret,* and such like; or he may say the writ is faulty for want of sur-names, or if the names of dignity be omitted; as if a bishop, abbot, prior or other, be disseised of any thing in the right of his dignity, and he makes his plaint simply of a trespass done only to his person, and not to his church or dignity in this manner; *A.* complains to you, whereas he ought thus to make his plaint. *A.* bishop of London, and so it is of disseisors; or he may say, that the writ is vicious, because the plaintiff who is solely in the plaint hath no cause of action, but with another who is not named in the writ.

Or it may be faulty if it be not contained in the writ, *disseisivit eum,* where it ought to be *desseisivit cam,* or *eos,* where it should be *eum* or *eam, et e contra.*

It is contained in the writ, (wrongfully and without judgment) etc., and to that one may plead not wrongfully, but rightfully, denying any other force.

And note, that one may be disseised wrongfully and without judgment, and wrongfully and by judgment; as it is of those who are disseised of their freeholds by the judges who have no jurisdiction, and nevertheless adjudge men to be put out of their possessions; and one may be rightfully and without judgment, as in the cases aforesaid; and further rightfully and by judgment, and thereof rise exceptions, and so not without judgment and yet by judgment, and that may be either by the judgment of judges commissaries, or judges ordinaries as were the suitors.

Again, writs may be vicious by misprision of the names of the towns, as if a hamlet be named for a town; or if the town be not right named, or if the town be not distinguished, where there are two towns of like name in the same county.

And from these words (after the term) may arise exceptions; as if not the term yet he might have distrained for, or the arrearages of his pension, or special obligation, except that he had any wrong.

Or because another writ for the same action is yet depending betwixt the same parties; or he may say

that he wrongfully complains, whereas at his own plaint he lost the same tenement by a lawful judgment against him; or that he hath released or quit-claimed all his right, or to the same purpose, or otherwise ratified his estate, or because at another time he withdrew his action before such judges.

For the helping of the peoples memories are escripts, charters and muniments very necessary, to testify the conditions and the points of contracts; for by the statute of *Lenfred,* who ordained that one might deny contracts by waging of his law, and that plaintiffs prove their writings, otherwise their charters which are not denied, and not to be shewed by jurors in *England* for foreign contracts, of places enfranchised, or elsewhere, where the king's writs run not, by copies, or collation of the seals of others, or by jurors, or by battle, according to the plaintiffs action.

To give matter and way to exceptions in the aid of those who are to answer, one is to know the end and limitation of actions, and of pleas, so that the pleas may have an end, and therefore prescriptions were ordained, whereof *Thurmond* ordained, that criminal actions for revenge should cease at the year's end, if they were not brought before, and the same time he appointed in all actions for wrecks, estraies, waif, and of things lost; in personal actions venial he appointed the term after the last Eyre in those parts; in real actions and mixt he appointed forty years, nevertheless

as to the king in the right of his crown, and to the frank estate *nullum tempus occurrit.*

To an action of account he may say, that he never was his receiver, nor administrator of his goods, nor of his monies, whereby he was bound to render him any account, and that he received them of him under the title of buying, whereof he gave him a writing to surrender at a certain time; or thus, notwithstanding he was his receiver or administrator in a franchise, or elsewhere out of the realm, or in a privileged place, whereby he is not bounden to give him an account within the realm, nor where the king's writ runneth, or is guildable, or *e contra.*

Or he may say that the writ is vicious by false supposition, and falsely supposeth the defendant to be a fugitive, and besides not a freeholder within his bailiwic to whom the writ is sent.

Or he is not bound to yield him any account for that he was never receiver of his own hand, or of his daily receipt he gave him a daily account; or that he disbursed nothing, nor brought any thing but in the plaintiff's sight, or of some of his; or for that the plaintiff by tallies and other rolls hath discharged him of so much in value as the defendant was to give an account for.

Or because he hath made him an acquittance thereof, or because he was never guardian of his inheritance as his guardian, but was guardian during the time of

the thing for his own proper use, or it belongeth to him that is guardian of the lands in the right of his fee, whether it be socage or other.

To the action of villanage he may say, that he is a freeman, and that he hath proved the same at another time by a writ of *libertate probanda,* that he is quit from any challenge by the plaintiff for ever, if he have no reasonable counter-plea against it.

As to the seisin of villain services he may say, that he did those services wrongfully, by extortion, and duress of him and his bailiffs, or for the service of villanage and villain land which he held of him, and not by service of blood; and there are two other things, the one that if the defendant can shew a free stock of his ancestors, either in the conception or in the birth, the defendant hath always been accounted for a freeman, although his father, mother, brother and cousins, and all his parentage acknowledge themselves to be the plaintiff's villains, and do testify the defendant to be a villain.

The other thing to be noted is, that no more than the long tenure of copyhold land maketh a freeman a villain, the long tenures of freehold maketh a villain a freeman; for freedom is never lost by prescription of time.

There are many manner of proofs by the same pleas, sometimes by records, sometimes by battle, sometimes

by witnesses, sometimes by the confessions of the adverse parties.

1 By record, as in case where the parties do agree together upon some inrolment, or to the judgment of some judge ordinary or assigned.

2 By battle, for upon warrant of the combat which the judges took betwixt *David* for the people of *Israel* of the one party, and *Goliah* for the *Philistines* on the other party, is the usage of battle allowable by the law in *England,* so that the proof of felony and other cases is done by combat of two according to the diversities of the actions; for as there is a personal action and a real, so there is a personal combit and a real; personal in personal actions, real in reals; and these combats are differing in this, that in a personal combat for felony none can combat for another, nevertheless in actions, personals, venials, it is lawful for the plaintiffs to make their battles by their bodies, or by loyal witnesses, as in the right of real combats, because that none can be witness for himself; and no man is bound to discover his real right, and although they make these combats for the plaintiffs by witnesses, the defendants nevertheless may defend their own right by their own bodies, or by the bodies of their freemen; and further they differ, for as much as in appeals none can combat for another, but it is otherwise in real actions; for if that one of the parties be hurt so as he cannot combat, his eldest son may wage the battle for him.

The battle of two men sufficeth to declare the truth, so that the victory is holden for truth.

Combats are made in many other cases than in felonies, for if a man hath done any falsity to me in deed, or in word, whereof he is appealed or impeached in judgment, if he deny it, it is lawful for me to prove the action either by jury or by my body, or by the body of one witness; and if it be of the false judgment of many, then the proof belongeth only against the pronouncer of the judgment for the whole court.

And so it is in case where you deny your gift, bailment, pledges, deed, seal, or other manner of contract, or the words which you spake, or the deed which you did.

Nevertheless you are to distinguish of the qualities of the causes, for in appeals of felony none can combat for another, as is said, but in venial causes, although one be killed in the battle he committeth no murder, but only those vanquished, or their clients for them shall tender to the combatants vanquishing, forty shillings in name of cowardice, besides the judgment upon the principal.

And in case where battle could not be joined, nor there was no witness, the people in personal actions used to help themselves by a miracle of God in this manner; if the defendant were a woman, or of such a condition that she could not join battle, and the plaintiff had no witness to prove his action, then the defendant might

clear her credit by the miracle of God, or leave the proof to the plaintiff; and in the contrary case the proof only belonged to the plaintiff.

At the day of the proof, or of the purgation, after the *benediction,* and the *malediction* of the priest, cloathed with the holy garments of the mass, and after the parties oaths, one used to keep the party; and he was to carry in his hand a piece of burning iron if he were a freeman, or put his hand or his foot in boiling water, if he were not free; or to do some such thing which were impossible to do without a miracle from God; and if he was not hurt or blemished the adverse party remained as attainted; but Christianity suffered not that they be by such wicked arts cleared, if one may otherwise avoid it.

Battle is not to be joined betwixt all people, for it is not to be joined but betwixt equals, nor yet betwixt all equals, for not betwixt the father and the son, nor betwixt women, or infants, or clerks, or parents, or assigns.

Equals are not a man and a woman, nor a holy man, and an excommunicate person, nor a Christian and an infidel, nor a whole man and a sick, nor a man of good memory and a madman, nor a wiseman and a fool, nor a sound man, nor a man mayhemed, nor a man and a child, nor a clerk and a lay person, nor a man professed in religion and a secular man, nor a true man and a

felon, nor a man within the king's allegiance and out of his allegiance, nor the lord and tenant.

The smallness also of the thing in demand doth hinder the battle, and many other causes, as it appeareth in the law of fees; nevertheless if those who are not receivable to join in battle will combat, if the battle be joined betwixt them, it is no wrong to them who desire it.

And if any one offereth himself to combat with one armed, who before was not brought by the parties, and the adverse party demand judgment for the default of his adversary; as if he tendereth a witness who offereth himself to decide the difference, and now he offereth to furnish the battle by another who was not seen, nor heard in court, and who cannot and ought not to try the battle; in such case it belongeth to try the exception as peremptory to the action, if the parties will not agree unto it.

SECT. 24.

Juramentum duelli.

AFTER the battle joined, adjourned and presented, and the parties duly armed, first the defendant is to swear in this manner, Hear this you man who I hold by the hand, whom you call *N.* by name, that I did never

kill such a one your father, or said any such thing such a day, etc. So God me help, and the holy evangelist.

Afterwards the plaintiff ought to swear in this manner, Hear you this man who I hold by the hand, that you who are called by your right name *N.* are perjured, because that you such a day, etc., feloniously killed, etc., or said such words, or did such a thing, etc.

SECT. 25.

The ordring of the combatants.

AFTER their oaths be taken, it behoveth to look that the parties be armed according to the ancient usage, of what condition soever they be, knight or others.

The ancient usage to be armed in all cases of combat is this, the bodies are armed without *seme cotu et beliea,* and the heads and the necks, and the hands uncovered, the backs, thies, legs and feet armed with iron, and each to have a shield of iron, and a staff horned of one assise. The plaintiff cometh into the list from the East, and the defendant from the West, and on the place they swear in this manner. That they have not about them any charm, nor deceit, nor have eat nor drank any thing whereby the truth might be disturbed, lessened, and the law of the devil enhansed; so God them help and the holy evangelists. Then proclamation is made that none

disturb the battle, and oyes is made, that there be no noise upon a corporal punishment; and then they meet together, and if the defendant defend himself till after the sun setting, and demand judgment of the default of the plaintiff, in that case judgment shall be given for the defendant.

And if any fraud be found with one of the parties, as to be privily armed, or there found, or other thing unallowable, and the fraud be adjudged, that they be presently severed, and judgment is presently to be given, and the vanquished is to acknowledge his offence in the hearing of the people, or speak the horrible word of cravent in the name of *cowardice,* or his left foot to be disarmed and uncovered in sign of the cowardice, and that judgment be presently given against the principal.

SECT 26.

Of personal trespass.

As to personal trespass, in the case, this exception lieth, Sir, he wrongfully impleadeth me of this trespass, for the same man impleaded such or such before such judges, in such a place of the same trespass, and made me no party to the suit; and forasmuch as that he then recovered by judgment his full damages against them named in his plaint, and this suit is not brought against me, but to recover damages, and the law is, that a man

shall not recover double damages, I demand judgment of his action.

As to the alienations and occupations of franchises, reals, appendants to the crown, a man shall not vouch therein to warranty, nor demand the view, nor prescribe in them; for of such dignities none can help himself, by a plea of long prescription, but such avowries of long continuance are accounted rather prescriptions of wrong, than lawful exception, seeing *nullum tempus occurrit regi,* in his franchises, but therein the king is like to an infant who can lose nothing although that for the personal trespass for the using of them, it behoveth every one to excuse the wrong done to the king, or to any other; and that may be done two ways, because his ancestor whose heir he is, died seised thereof, and so that he hath enjoyed the same by title of succession, as a thing annexed to his land. Or because he, of whom he purchased the land to which the franchise belongeth, was seised, as if he were the possessor thereof. But this exception is counter-pleadable by this replication, Sir, this avowant cannot recover nor excuse himself. For although that such a one his ancestors were seised thereof, yet nevertheless he could not grant away this franchise, for the kings never granted them so, that the grantees could assign them over, or make assigns of them.

SECT. 27.

Of purprestures.

To purprestures, if the defendant may excuse his wrong, he need not to answer thereunto without a writ, no more than to the action of franchises; not of his own wrong of land or fees, or of the appurtenances against any other than against the king; nor for the king but in his presence. And if the wrong be not originally the plaintiff's, he may vouch to warranty.

SECT. 28.

Of treasure.

To the alienation of treasure found, he may justify it, if he be privileged or authorized so to do. Or he may say, that he himself put it there, or such other whom he remembreth; whereby no action accrued to the king.

SECT. 29.

Of wrecks.

To the action of wrecks he may plead, that the king hath no action for the same, because the year is not yet

past; and in the same manner is it of estrays, and of all other things found. Or because that he knoweth to whom the goods belong who is alive. Or because the goods were taken far in the sea, and were not cast upon the land by the waves of the sea.

SECT. 30.

Of usury.

To usury he may plead, and swear that he lent his corn in winter, to receive the same in *September,* according to the price as corn should be sold, which was dearer at that time; or he may swear, he lent his monies to receive better money for the same for a year; and that the same is no usury.

SECT. 31.

Of hunting.

To an action of hunting, chasing, or fishing, he may plead, that he hath done no wrong, for it is his right to hunt there, or to chase, or it is his common piscary belonging to his manor of such a place, etc.

SECT. 32.

Of obligation.

As to obligations (or covenants) he may plead, that notwithstanding that obligation be his deed, nevertheless it ought not to bind him, because it is vicious, or by false supposition; or because the defendant never saw any money or other thing to the value; or it is by mixture of offence or ill faith, as it is said of vicious contracts; or he may plead a release or quit-claim; or that it was contracted that he might do waste, or that he hath done nothing to be adjudged waste; or because he hath taken nothing but reasonable estovers for house-boot or hay-boot; or he may claim fee in the tenement by any lawful title.

SECT. 33.

Of attaint.

IF any of the parties say, that the jurors have made a false oath, or any jury; an action of the attaint lieth, which is to be tried by 24 jurors, so that every false witness be attainted by two juries. In which case it behoveth the plaintiff to have the first verdict present

under the king's seal, or of the party, or of the judge, and the parties to the plea, and that he declare in what point they have made a false oath.

Or the tenant may plead, that the plaintiff ought not to be answered to this attaint, because the first judgment had not its full effect; or because that the principal in all, or in part, or in right of satisfaction of the damages remaineth yet to be barred.

Other exceptions there are, as to the challenge of the persons of the jurors, as appeareth in the chapter following.

SECT. 34.

The ordinance of attaint.

BECAUSE it belongeth to the plaintiff to prove his action, and to the affirmer to prove his affirmation, and not to the denier his negation; and that two credible witnesses according to the word of God are sufficient for witness. The usage is, that the affirmative party, in aid of the court, cause the nearest credible neighbours to appear in witness, so that there be 12 men at the least of the jury, of ancient time ordained to be of the assize, of which if two men are by false verdict of them, and of the other jurors; or if by good examination, if all the jurors be of one assent found convenable, it suf-

ficeth; and if not, or if all the jurors say generally, that they know nothing, or doubt of the matter, or if they say not expressly against the defendant, or if they speak for the defendant, in such cases, it is to be adjudged against the plaintiff, that he proveth not sufficiently his saying. And although the defendant would make other defence, he shall not be suffered so to do.

Against jurors hold challenges, as against witnesses, in this manner. Sir, this man is not a covenable juror, because he is one of those who indicted me of a mortal crime, so as he did as much as in him lay to destroy me, and so he is my mortal enemy, or for other cause of enmity.

Or because that he is excommunicate, or indicted, or appealed of a mortal felony; or because he is not of the king's allegiance, or because he was at another time attainted of a false oath, or suffered such corporal punishment for his offences or otherwise is infamous.

Or because he is friend, cousin or ally, or of kindred to the other party; or because he is a villain, or otherwise in custody; or because he is the servant, the proctor, or tenant of the adverse party, or because she is a woman, or because he was outlawed, or because he was forjured the realm, or because he procured himself to be one of the jury, or because he is within age, or because he is a lunatick, or a madman; and many other exceptions of challengers there are, of which if any be denied, the challenge is to be tried by the

jurors, and according to the trial, the juror shall be admitted or refused, and if no jury once appear for want of jurors, he may have another.

SECT. 35.

Of oaths.

OATHS differ many ways; the chief oath is that of fealty, which is incident to every homage issuing out of land, and sometimes there is the oath of fealty, of resiants and dwellers in other manors, and sometimes remaining in others service.

The oath of allegiance was in these words. I will bear faith to such a king of life and member, and terrene honour, against all those that from this day forward shall, etc. Go God me help, and his holy evangelist.

SECT. 36.

Homage.

HOMAGE is done in these words. I become your man for such land; so that the whole quantity be shewed, and certainty specified; whereby the lord well know-

eth both how he may warrant his tenant, and for how much he bindeth his land to warranty; and that the tenant know for how much he is his tenant.

SECT. 37.

Fealty annexed to homage.

THE oath of *fealty* annexed to *homage* is in these words. I shall bear *fealty* to him by name of life and member, etc., for so much as I shall be his tenant, against all, etc., saving the oath of *fealty* which I have made to such a king, etc.

And if I swear *fealty* to another than to the king, then thus, saving the faith which I swore to the king, and to my other lords.

And if the homage be done to the king, or to another to whom the tenant hath before sworn *fealty,* in these cases, he needeth not swear *fealty* again, if the allegiance in no case hath been broken.

SECT. 38.

Common oaths.

COMMON oaths are in these words, I will speak truth

in what you ask of me in such a case; So God me help, etc.

The oaths in assises are in these words.

I will speak the truth of the land of which I have had the view by authority of this assise, or of the land of which this action of redisseisin is arraigned, or of the pasture, or fee, or of the nuisance, or of the wall, or of the ditch, or of the pool, or of the water, or of the church, or of the rent, or of the service, and nothing shall hinder me that I shall not speak the truth, etc.

Of life and member and terrene honour, he will do so much, that he will never assent that the king or his other lord have damage of his life, or any of his members, nor will assent that his honour shall be overthrown in power nor fame.

SECT. 39.

Of final accords.

No law forbiddeth pleas, nor accords, whereof it is lawful for every one to agree with his adversary, and to release and quit-claim his right, and his action.

Nevertheless after one hath once affirmed and brought his personal action whereby scandal ariseth, none can agree it without the leave of the judge, so as he may withdraw it. For every plaintiff in actions

of scandal, who attainteth not his adversary according to that as he hath brought, his plaint is adjudged scandalous, as his adversary should be if he were attainted. Nevertheless, in favour to save a man from death, who is not attainted of mortal offences, it is suffered that the adverse parties do agree; after battle waged one of the parties nevertheless remaineth infamous.

None can accord or agree, who is not of the age of 21 years, nor any who is in custody, nor any by attorney.

In custody are villains, married women, men professed in religion, infants within the age of 14 years, heirs ideots, heirs deaf and dumb, heirs diseased, and those who are in prison, and under bail, and women who are in the custody of the lords, who have the marriage of them.

THE CONTENTS OF THE FOURTH CHAPTER.

	Section	Page
Of judgment	i	183
Ordinance of judgment	ii	183
Of jurisdiction	iii	186
Of defaults punishable	iv	189
Of defaults	v	190
Of personal actions	vi	191
Of defaults in real actions	vii	192
Of actions mixt	viii	192
Of pledges and mainpernors	ix	193
Of defaults after summons	x	194
Of champions	xi	196
Of pains	xii	199
Of infamies	xiii	201
Of majesty	xiv	202
Of burning	xv	203
Of murder	xvi	204
Of pains in divers manners	xvii	213
Of false judges	xviii	214
Of perjury	xix	216
Of the offices of justices in Eyre	xx	217
Of the articles in Eyre	xxi	218
Of franchises	xxii	231
Of satisfaction of debts	xxiii	232
Cases of disseisin	xxiv	222
Of amercements	xxv	225
Of amercements taxable	xxvi	226
Of the office of justices in Eyre	xxvii	228

CHAPTER IV.

SECT. I.

Of Judgment.

THE flower, and necessity of law doth depend in righteous judgment, without which the law can have no effect, nor any due end. And therefore it is fit to speak of judgments, which are not in all points here according to the rigour in the old testament, and the usages used by *Moses* and the prophets, before the incarnation of Christ; but they are mitigated to the temper of mercy, of the truth, and of the justice which Christ himself used upon the earth, and commanded to be used in the new testament, and which the apostles and their successors have used since the incarnation of Christ, and according to the judgments of the ancient usages in pleas, touching the laws of this realm.

SECT. 2.

The ordinance of judgment.

JUDGMENT cometh from jurisdiction, which is the

greatest dignity which belongeth to the king. And there are two kinds of jurisdiction, ordinary and assigned; every one hath ordinary jurisdiction, if offence take it not away from him; for every one may judge his own according to the right rules of law. But this jurisdiction is now restrained by the power of kings, in as much as none hath power to hold plea of trespass or of debt which passeth 40 *s.* but the king. Nor any hath power of conusance of fees without a writ. Nevertheless, it is lawful for every one to f. oust the mortal offender, for committing of their offences, by good witnesses, by warrant of ordinary jurisdiction, whether the offenders be clerks or lay people, of age, or within age, and all other of what condition soever they be; and in those cases are those offences called notorious offences.

There are two kinds of notorious, notorious in fait, and notorious in right.

Notorious in fait is, where no contradiction lieth, nor no oaths need to justify them, by reason of the witness of the people.

Notorious of right, is where the offenders are attainted of their offences by themselves, or by the oaths of witnesses, or otherwise in judgment. This jurisdiction assigned is that which the king assigns by his commissions of his writs; for without a writ he cannot by law grant any jurisdiction, if not in the presence, and with the assent of the parties.

None can give jurisdiction but the king, and the reason is, because he is not sufficient to bear without help the charge which belongeth to him to punish the trespasses, and to assoil the offenders which he hath to govern.

And so our ancestors appointed a seal and a chancellor to help the same, to give writs remedial to all plaintiffs without delay.

That writs used to be of this assise, they were without rasure, without interlining, without blots, without usual transposition, and without every fault in the parchment and letters, and written in English with a known hand, by a clerk of the chancery, and used to contain the name of the parties, and the substance of the plaint, and the name of the judge, and of the king, or other teste of the writ, which sometimes were directed to the lord of the fee, sometimes to the bailiffs, sometimes to the justices in Eyre, sometimes to certain persons named, and sometimes to persons not named, as to bailiffs, justices, and sheriffs.

And every plaintiff used to have a commission to his judge, by the writ patent aforesaid.

And now may justices, sheriffs, and their clerks forge writs, thorough draw loose, amend or impair them, without any prosecuting or punishment, because the writs are made close through abuse of the law. By that seal only is jurisdiction grantable to all plaintiffs without difficulty, and the chancellor is chargeable by his

oath of allegiance to make such writs, and that he do not delay or deny justice, nor a remedial writ to any one.

SECT. 3.

Jurisdiction is a power to declare the law.

THAT power God gave to *Moses,* and that power they have now, who hold his place upon earth, as the pope, and the emperor, and under them the king now hath this power in his realm.

The king, by reason of his dignity, maketh his justices in divers degrees, and appointeth to them jurisdiction, and that in divers manners, sometimes certain, especially, as in commissions of less assises; sometimes in certain generally, as it is of commissions of justices in Eyre, and of the chief justices of pleas before the king, and of justices of the bench, to whom jurisdiction is given to hear and determine fines not determined, the grand assizes, the transactions of pleas, and the rights of the king and of the queen, and of his fees, and the words of the king's writs, whether they be named generally or specially.

Besides, the barons of the Exchequer have jurisdiction over receivers and the king's bailiffs, and of alienations of lands and rights belonging to the king, and to the right of his crown. Sometimes jurisdiction is

given to sheriffs for the defaults of others, is appeareth in the writ of right; where it is said, that if he do not right, that the sheriff of the county shall do it.

Sometimes to those who have the return of writs returnable.

Sometimes jurisdiction is given to the justices of the bench by removing of the pleas out of the counties, before the said justices, and sometimes to record the pleas holden in mean courts without writs, before the same justices of the bench: but as those records ought not avail the plaintiffs, if not after judgment given, that the pleas be returnable until after their judgments. And as the pleas moved upon the writs are to be remanded into the lords courts, where the lords have not failed to do right. In like manner are the pleas removed by pone returnable in the counties, in case where the parties never appeared in court for to plead.

To the office of chief justices it belongeth to redress and punish the tortious judgments, and the wrongs and the errors of other justices, and by writ to cause to come before the king, the proceedings and the records, with the original writs, and before such justices are all letters pleadable returnable, and to be ended, wherein mention is made before the king himself; and the writs not pleadable, nor returnable before the king, are returnable into chancery.

And also it belongeth to their office, to hear and determine all plaints made of personal wrongs, within

twelve miles of the king's house, and to deliver gaols and the prisoners from thence, who are to be delivered, and to determine whatsoever is determinable by justices in Eyre more or less, according to the nature of their commission.

On the other side there is a kind of jurisdiction, which is called arbitrary, which is not ordinary, nor assigned, as if such which is by the assent of the parties.

Of jurisdiction cometh judgment, which hath many significations: in the one, judgment is as much as to say absolution from offence; in another sense, as sentence, which sometimes soundeth well, as of discharge or acquittance from punishment, and sometimes ill, as excomengement: and in another sense, as the end of the plea, and the end of jurisdiction.

Jurisdiction assigned may be for a time, or for ever. For a time, as in some exception dilatory, where the action reviveth; for ever, as by a definitive sentence upon the action.

Judgments vary according to the difference of offences. In like offences nevertheless there are the like judgments. For the mortal offences according to the warrant of the old testament, were assoiled by death; for in the old testament it is found that God commanded *Moses,* that he should not suffer felons to live. But before more is to be spoken of punishments, it is to see by what introduction offenders and contumacious persons are compellable to appear in court, and by what judgments.

SECT. 4.

Defaults punishable.

DEFAULTS are punishable many ways. In appeals of felony they are punishable by outlawry; which judgment is such, that after that any one hath been solemnly called, and demanded to appear to the king's peace at three several counties for felony, and he cometh not, that from thence forward he is holden for a wolf, and is called wolf's-head, because the wolf is a beast hated of all people; and from thence forward it is lawful for any one to kill him; as it is a wolf, whereof the custom was, to bring the heads to the chief place of the county, or of the franchise, and according to law, for every head of an outlaw, to have half a mark, and such fugitives, outlaws, forfeited for their contempts, the realm, country, friends, and whatsoever belonged to the peace, and all manner of rights which they ever had, or could have by any title, not only as to themselves, but to their heirs for ever. Also, all confederations of homages, of alliance, of affinity, of service, of oaths, and all manner of obligations betwixt the outlaws and others were broken, severed, and defeated by such judgment. And all manner of grants, rents and contracts, and all manner of actions which they had against any manner

of persons, were void, not only from the time of judgment, but from the time of the felony, for which such judgment was given; and such persons could never again resort to answer the felony, if the process of outlawry were not faulty, if not by the great mercy and favour of the king; women were not plevisibles, and put in dozeins as men, but were waves.

SECT. 5.

Defaults.

IN personal actions, venials, defaults used to be punished after this manner. The defendants were distrained to the value of the demand, and afterwards they were to hear their judgments for their defaults, and for default after default, judgment was given for the plaintiff. This usage was changed in the time of king *Hen.* I. that no freeman was not to be distrained by his body for an action personal, venial, so long as he had lands; in which case the judgment by default was of force, till the time of king *Hen.* III. that the plaintiff should recover his seisure of the land, to hold the same in demesne after default, until due satisfaction was made, so as the defaults were more hurtful to persons in contempt, then profitable.

Some actions are personals, and not mixt in the in-

troduction; as of neifty, of account, of leading away distresses; and some actions there are, that although they savour of the personalty and realty, yet they hold not the rules of those actions; as of recognitions of assises, in which if the tenants make defaults, for that there is no distress nor seisure of the land, or other thing in the king's hands, but the recognitions are to be taken *ex officio,* and the judgments are to be pronounced according to the verdict of the jurors, in respect of such defaults.

SECT. 6.

Of personal action.

IN personal actions, venials, where the defendants are not freeholders, the defendants used to be punished after this manner. First, process was to be awarded to arrest their bodies, and those who were not found, were put in exigent in what court soever the plea was, and were at three courts solemnly demanded and proclaimed; and if they appeared not at the fourth court, then were they banished the lord's jurisdiction, or the bailiffs of the court for a time, or for ever, according to the quantity of the trespasses.

SECT. 7.

Defaults in real actions.

THE defaults in real actions are punishable in this manner. At the first default the plaintiff is there seised to the value of the demand into the hand of the lord of the court, and the tenants are summonable to hear their judgments of defaults; or after appearance, the seisure is to be adjudged to the plaintiffs, to hold in the name of a distress, until by lawful judgment he be ousted thereof. And if any one appear in court, first he is to plenise the thing in demand, and presently to answer the default; in which case he may deny the summons, because he was never summoned, or not reasonably summoned, and thereof he may wage his law against the testimony of the summoners, although they be present, and if he wage his law, he is presently to plead to the action, or to the plaintiff.

SECT. 8.

Of actions mixt.

THE defaults of mixt actions are punishable in this manner, the defendants are distrainable by all their

moveable goods and lands, saving that they are not put out of that possession from court to court, till they appear and answer, and the issues come to the profits of the lords of the courts.

SECT. 9.

Of pledge and mainpernor.

PLEDGES and mainpernors are of one signification, notwithstanding that they differ in names; but pledges are those, who bail other things than the body of men, as in real actions and mixt, mainpernors are in personal actions, only those who bail the body of a man; safe pledges are those who are sufficient to answer the demand, or the value, and are true men, and freeholders to whom the plaintiff is, and in whose court the plea is brought; and if any one bring the body or his fees by default, he is sufficient punished, though he be not amerced, but then the offender is first amerceable, when he is brought to judgment, and cannot excuse his wrong or save his default.

And as none who cometh before summons is amerceable so no plaintiff is amerceable, or his pledges, *de prosequendo* for nonsuit, where the tenant appeareth according to the warrant of the summons; or otherwise maketh satisfaction for the same.

As in case where the king commands the sheriff, that he command such a one to appear or to do; and if he do not, and the plaintiff put in sureties to prosecute his suit, then that he summon or attach the defendant, etc. In which case, if the sheriff had not warned the tenant to appear to do according to the points of the warrant, if he take surety of the plaintiff to prosecute, he doth him wrong: but the plaintiffs and their pledges are to be amerced, when the defendants offer themselves in judgment against them; and they make defaults by nonsuit.

And also those sheriffs do wrong who forbear to execute the king's commands, in as much as the plaintiffs have found sureties to prosecute their plaints, when no mention is made in the writs to put in sureties.

SECT. 10.

Defaults after summons.

As there is a default of persons, in the like manner there are of things; as of services issuing out of lands where the lands are in service; and where not: if rent, suit, or other service be behind to the lord of the fee, the tenant is not distrainable for the same by his moveable goods, but it behoveth to summon the tenants to save their defaults, or to make satisfaction, or to answer

wherefore those services due out of their possessions are behind to the lords; and if they appear not at the summons by the award of the suitors, their lands are to be seised into the lord's hands, till they justify themselves by pledges. And if they be again summoned, to hear the judgments for their defaults; although they come not at the second summons, they are not to be amerced, in as much as they came, they may render the land, or alledge a privilege, or say something why they ought not to obey the summons.

And if the lord have not a proper court, nor suitors, or hath not power to do justice to his tenants in manner as aforesaid; then the same may be done in the county or hundred, or else in the king's courts; or at first by a writ of customs and services, and other remedial writs. And if any one hath not any thing to acquit himself, the lord is not to lose his right although he be delayed thereof, but the lord may seise his land as before is said, and the tenant is to recover his damages where he can, and it shall be accounted his folly to enter or remain in another fee, without the consent of the lord.

And if any one oust him of his land, and of his tenement, and enforceth another person to hold of him, and maketh himself mesne betwixt the lord and the tenant, in prejudice of the lord, in such a case the law is used to hold the course after said.

SECT. 11.

Of champion.

IF any one do or say to his lord of whom he holdeth any thing, which turneth to the hurt of his body, or to his disinherison or to his great dishonour; first by the award of his court, or of some other such a one is summonable, if he be his tenant, and afterwards if he make default he is distrainable by his land by the lord, till he appear; and if he appear, and cannot discharge himself, by his wager of law, by 12 men more or less, according to the award of the court he is to be disinherited of the tenancy, which he holdeth of the lord, in such a manner by the judgment of the suitors, and so it behoveth that the tenants leave their lands, and that they come to the lords.

And if any one denieth his service which he ought to do, it may be said by the lords, that wrongfully he denieth either part or the whole, and that to his wrong, and so further count of seisin by his own hand, and that such is his right, etc., as after shall be said.

And the tenant may chuse to try his right by his own body, or by another, or join issue upon the grand assise; and pray conusance whether he hath the better right to hold such land specified, discharged of such

service, as he holdeth, or the said *A.* to have the same land in demesne as he claimeth.

And if the defendant will try his right by the body of another, then ye are to distinguish. For if the action be personal, the suit need not be present; and if the action be real and the tenant hath his champion present; then may the plaintiff offer his champion against the champion of the defendant, or he shall lose his covenant or his writ. And if the defendant have no champion, then are the parties adjournable if they have joined battle, that they have their champions ready at the next court, as appeareth in the case of *Saxeling* to whom *Hustan* was bound in a bond of 10 *l.* by a writing obligatory made at Rome, which the said *Hunstan* denied, that it was not his deed, to which *Saxeling* by way of replication answered, that he wrongfully denied the same, and that wrongfully; for that he sealed it with his seal, or with the seal of another which he borrowed of him, such a day, such a year, and at such a place, and that if he would deny it he was ready to prove it by the body of *A.* who saw it, or by *O.* and *C.* who saw the same, and if any hurt come to them, he was ready to prove the same by another, who could prove the same. And so it appeareth, that it is not needful to have present suit in such personal actions the first day, but the parties may be adjourned as it is said.

And if any one who cannot be a fit witness, or who

is a champion, be offered by one of the parties to combat, who was not named before to make the battle, and the adverse party there challenge him, and demand judgment of the default, in such case the judgment is to be given against the profferer.

And if any ill happen to any of their champions whereby they cannot combat according to their proffer, none is receivable to try the battle for him, but only his eldest son lawfully begotten, as by some is said.

And if the tenant's champion be vanquished, the tenant thereby loseth all homage and all alliance, and all oaths of fealty, and all homage betwixt him and the lord, and the lord is to enter therein, and to hold the same in demesne as if he had recovered by the grand assise; and if the champion of the lord be vanquished, that then the judgment be, that the tenant hold his land for ever quit of the service in the demand.

And if the king doth any wrong to any of his freemen, who hold of him in chief, the same course is to be holden, the earls of parliaments and the commons have jurisdiction to hear such causes and determine them, because the king cannot by himself, nor by his justices, determine the causes nor pronounce their judgment, where the king is a party.

And as the lords may challenge the tenants of wrong, or injuries done to them against the articles of their fealty, in the like manner are the lords challengeable of wrongs and injuries done by them to their tenants

And if the lords do not appear to answer their tenants; then are the tenants to be adjudged that they do no service for their lands, till the lords have answered.

SECT. 12.

Of punishments.

PUNISHMENT is a satisfaction for a trespass or an offence; there are two kinds of punishments. Voluntary and violent.

Voluntary is that which bindeth the doer of his own accord, as it is in his compromises, to compel the people to keep their bargains, but with such punishments the law medleth not with: of violent punishment wherewith the law medleth, there are two kinds, corporal and pecuniary.

Of corporal some are mortal, and some venial; of mortal, some are by beheading, some by drawing, some by hanging, some by burning alive, some by falling from dangerous places, and otherwise according to ancient privileges and usages.

The offences which require punishment of death, are the mortal offences.

Of venial punishments, some are by loss of member; as the felony of mayhem in case of wrong; of member;

some by the loss of hand, as it is of false notaries, and of cutters of purses with the larceny of less than 12 *d.* and more than 6 *d.* which king *Rich.* changed, some by cutting out of tongues, as it used to be of false witnesses, some by beating, some by imprisonment, some by loss of all their moveable goods, and not moveable, as of false judges, and it is of usurers attainted of usury after their decease, but not if they be attainted thereof in their life, for then they lose but only their moveables, because by penance and repentance, they may amend and have heirs. Some by exile and abjuration of their Christianity, or of the realm, of the town, of the manor or the land and their friends, as it is of those who are attainted in personal actions venials, who are not able to make satisfaction, some by banishment, as it in contempts in personal actions venials, some by other corporal pains, as it appeareth after in its place.

And although one offend in deed, or in word, in all judgments upon personal actions, 7 things are to be weighed in the balance of conscience, that is to say, 1 The cause. 2 The person. 3 The place. 4 The time. 5 The quality. 6 The quantity. 7 The end.

1 The cause whether it be mortal or venial, 2 The person, the plaintiff and defendant, 3 The place, whether in sanctuary, or not, 4 The time, whether in day or in the night, 5 The quality of the trespass, 6 The quantity appeareth in itself, 7 The end, whether

the taking were in manner of distress by a justifiable importment, or in manner of larceny, by alienation unjustifiable.

SECT. 13.

Of infamous persons.

ALL those who are rightful attainted of an offence, whereupon corporal punishment followeth, are infamous.

Infamous are all those who offend mortally or feloniously, all those who are perjured in giving false witness, all false judges, all false usurers, and all those who are attainted of personal trespasses, to whom open penance is joined by judgment of law.

Those who imprison a freeman against his will, or blemish the credit of his franchise by extortion, or by any purchase; those who also bring attaints and cannot prove the perjury, whereby honest jurors are slandered.

And those who indict or appeal a man who is innocent of crime, blemishing his credit, or wrongful slandering him of any personal wrong; for those three pleas are held odious, the one because the holy scripture forbiddeth vengeance to men, but the punishment of offenders belongeth to God; and God commandeth to shew mercy, and that is against the appeal of felony; the other of attainder of perjury is odious for the corporal punishment which followeth thereupon; the 3d

because it is against the law of nature; which will not that any man should be in slavery to another creature.

Again those who combat deadly for reward, who are vanquished in the combat by judgment betwixt two men, those who withdraw themselves from battles when they have undertaken the combat, if therein they make default; those who keep brothel-houses of loose women, those who take again their wives after their sin of adultery is known to them, or keep those suspected of that sin; those who are adulterers, those who marry other wives leaving the first, those who are elopers or ravishers, those who take rewards to suffer, those who cast out their children to death, those who ravish their cousin or assines, those who marry a wife within the year after the death of their former wives, those who suffer themselves to be married within the year after the deaths of their first husbands, those and they who contract marriages elsewhere, leaving their wives or husbands, and those who too soon purify themselves, and many other infamous persons are to be punished by corporal punishments in divers manners.

SECT. 14.

Of majesty.

THE punishment of the mortal sin of majesty against the king of heaven, sodomy, is by burying the offenders

alive deep in the earth, so that the remembrance of them be forgotten for the great abomination of the fact, it being such a sin which calleth for vengeance from God, and which is more horrible than the ravishing of the mother; but this offence is not to be brought before any judge by way of accusation, but the very hearing of it is forbidden. The judgment of Romery is by fire, either to be burnt or hanged.

The judgment of heresy is fourfold, one is excommunication, another degradation, the third disinheriting, the fourth is burning to cinders.

The judgment of majesty against the earthly king is by punishment, according to the ordinance and pleasure of the king.

The judgment of falsifying, and of treason, is by drawing of the parties, and hanging them till they be dead.

SECT. 15.

Of burning.

THE judgment of burning is to hang until the parties be dead, which used to be by burning, and in case where the damageous burning is by increase of any combustible matter; it was used to cast them into the fire when they found them fresh in the doing of it.

SECT. 16.

Of murder.

THE judgment of murder is commonly by hanging until the parties be dead, in felonies not notorious, and in notorious it is by beheading the murderers, nevertheless we are to distinguish, for some kill men and offend not, nor deserve any punishment; some are manslayers in signification and not by name; and some are slayers of themselves.

The first are lawful judges who by a right judgment, and good conscience kill men; and the ministers, or officers who do executions of such lawful judgments; and also as it is of those who kill without judgment, and without offence, as it is of those who are without discretion and kill men, as madmen, ideots, infants within the age of seven years, and those who kill men in keeping of the king's peace, and of those who kill by law, as of those men-slayers, who kill men in their mortal offences, notorious in fact, and as it is of those who kill men in their own defence, who otherwise cannot save their own lives.

The other sort is of those who have a desire to kill and cannot, as it is of those who cast infants, sick people, old people, in such places where they intend they shall die for want of help; and as it is of those who so pain innocent men, that to avoid the same they confess

themselves to have mortally offended; those who condemn men by corrupt judgment, although that they do not directly kill them; and as wilful men-slayers, who appeal or indict innocent persons of mortal offence, and prove not their appeals, or their indictments; and although these used to be judged to death, nevertheless king *Henry* I. ordained this mitigation, that they be not judged to die, but that they have corporal punishment; and of those who wrongfully appeal, ye are to distinguish; for if any one hath appealed another so falsly, that there was no colour of appeal by judgment, or other reasonable proof, in such case he was to be adjudged to make satisfaction to the party, and afterwards to suffer corporal punishment.

King *Kanute* used to judge the mainprisors according as the principals, when their principals appeared not in judgment, but king *Hen.* I. made this difference, that the ordinance of *Kanute* should hold against main-prisors who were consenting to the fact, and the other should be adjudged against the plaintiffs, according to the example of the principals if they were present, and against the king they were punished with a pecuniary penalty.

The third case is of those who burn, hang, hurt, or otherwise kill themselves.

Again ye are to distinguish of other men-slayers; as of physicians, jurors, justices, witnesses, of ideots, madmen and fugitives; for physicians and chirurgions are

skilful in their faculties, and probably do lawful cures having good consciences, so as nothing faileth to the patient which to their art belongeth; if their patients die, they are not thereby men-slayers or mayhemors; but if they take upon them a cure, and have no knowledge or skill therein; or if they have knowledge, if nevertheless they neglect the cure, or minister that which is cold for hot, or hot for cold, or take little care thereof, or neglect due diligence therein, and especially in burning, and cutting off of members which they are forbidden to do but at the peril of their patient; if their patients die, or lose their members, in such cases they are men-slayers or mayhemors.

Judges judge men sometimes falsly to death wittingly, and sometimes out of ignorance; in the first case they are murderers, and are to be hanged by judgment, and not only those who gave the judgment, but the accessaries, abettors, and those who hindred not such judgment when they might have done it.

And in the second place ye are to distinguish; for one manner of ignorance is, as if a thing known had not been known, and this kind of ignorance doth excuse; the other is of a thing not known which ought to have been known, although he was not bound to know it, and this excuseth; also the third kind is, which cometh of not knowing that which a man is bound to know, and this excuseth not; and note, that ignorance in itself is no offence, but this neglect of knowing is an offence.

The judge doth not offend so much that he doth not make the law, but he offendeth in foolish undertaking upon him to judge foolishly or falsly. The fourth kind of ignorance is, that a man judgeth of a thing otherwise than rightful, and if such ignorance come of the fact it excuseth, and of the law then it excuseth not .Or thus, there is one manner of ignorance which one may overcome, and such excuseth not; and there is another kind of ignorance which one cannot vanquish, and such excuseth, whether it come by nature, or by too much passion, or sickness, or of rage.

And that which is said of judges is to be intended also of jurors, and of witnesses in cases notorious, where many intermedle feloniously, and any one be killed, and there be no cause to kill him; in case also where a child is killed by too much beating, and in case where many have wounded one man, who died of one sole stroke, all of them generally are adjudged men-slayers for the apparent evidence of the fact; for none but God can judge the intentions of those that gave the stroke that it was to kill, nor who intermedled therein to hinder that any hurt were done, with a good intent; some who command what may be for hurt, or may be for good; some which held the parties, and others who struck.

Again ye are to distinguish of other men-slayers; as some kill those who enter to do a mischief, if such cases be not notorious their acquittance or condemnation is

in the discretion of the suitors; also in case when people kill a man in defence of themselves and their possessions, as it falleth in disseisin.

Again, if a man draw another to fence with him, or to shoot with him, and he giveth him such a wound as if he meant willingly to murder him, the same is not to be judged for murder, seeing men cannot judge but according to facts, and not according to the intents or thoughts of the parties hearts.

Of fools also ye are to distinguish, for all fools are accountable men-slayers, as to have judgment; but only ideots, and infants within age, for a crime cannot be done, nor an offence but through a corrupted will, and a corrupt will cannot be but where there is discretion, and innocency of conscience doth save fools outragious; and therefore *Robert Volround* ordained, that ideots being heirs should be in the custody of the king, for their marriages, and for their inheritances of what manors or lords soever they held their lands.

Likewise ye are to distinguish of madmen, for franticks and lunaticks may offend mortally, and so they are to be accounted and judged for men-slayers, but not those who are mad continually.

Of infants also ye are to distinguish, of infants murderers, and of infants killed; the murderers within the age of one and twenty years are not presently to be judged to death in a fact not notorious, before they be of full age.

Of infants killed ye are to distinguish, whether they be killed in their mothers womb or after their births; in the first case it is not adjudged murder; for that none can judge whether it be a child before it be seen, and known whether it be a monster or not; and to infants killed in the first year of their age, the conusance belongeth to the church.

Of fugitives, and of those defendants is the distinction which followeth; he who killeth a fugitive after that he submitteth himself to the king's peace in a fact not notorious, he is to be adjudged to death as a man-slayer, otherwise not; and he who killeth a man defending himself, who might fly and avoid the killing is also to be adjudged to death as a man-slayer, otherwise not.

Of the offences of robbery, larceny, burglary, where the damage exceedeth 12 *d.* where the offenders are taken in their offences, the offenders are to be killed by losing of their heads, if the people be present after the fact and testify the felony; and in cases not notorious, the judgment is to be hanged till they be dead.

And if the defendant be a woman ye are to distinguish, whether she hath a husband or not, who is yet living, and also of the action, whether it be mortal or not; for if she be, and was sole without a husband which she hath married at the door of the monastery, and the action be mortal, she shall answer as a man doth; and if she be a feme covert ye are to distinguish,

for if she be accused of a mortal crime as principal, she shall answer, and if as an accessary, then ye are to distinguish; for if she be accused of consenting to the felony of her husband, or to any other, her husband not knowing it, yet ye are to distinguish of the crime; of the offences of larceny, of burglary, and of other small offences she may answer, that she was under the command of her husband, and that she could not contradict him; that answer is peremptory in larceny, and if without the knowledge of her husband, she shall answer: and if a woman without her husband be accused to have been in the company of a thief for a minute, or a very small time, she may say, that she was not in his company but as his concubine.

Of mortal judgments, of outlawry, of abjuration of the realm, of vanquished in battles for mortal felony, and otherwise attainted of a notorious mortal offence, or not notorious, the offence is such that the blood is corrupted; and of the offenders the blood is extinct in every descent in right of blood, so that nothing can descend from them to any of their heirs either next or remote by descent, but all shall remain to the lords of the fee, from the time they committed the offences, whoever were tenants thereof in the mean time by what contracts sover; and all fealties, contracts, and obligations are blotted out thereby; and of fugitives it is according as it is with outlaws, and their goods which re-

main (besides what belong to others) remain forfeited to the king.

And the like in remembrance of their felonies, and in hatred of the felons, it is lawful to destroy all their mansion-houses, to eradicate their gardens, to cut down and waste their woods, to plough up their meadows, or otherwise overturn them, which king *Hen.* I. did moderate at the request of the Commons in this manner, for the saving of the lands of mortal felons in their hands, of what manor soever they were holden, that he should hold the same, and should take the profits thereof for one year, and should do waste if there were not other agreement made with him.

For the offence of rape, the judgment was to be hanged till he died, without having regard whether the woman ravished were a maiden or not, or without distinguishing of what condition she was, and whether at the suit of the person, or at the king's suit; which offence before the time of king *Edw.* the second, was by burning of them over the eyes, because the lust came in by eyes, and the heat of whoredom came from the reins of the lecher.

Seven things to stay judgment of death.

1 False judgment, or foolish judgment.
2 False testimony.
3 Default of better answer.
4 The hast of the king.
5 A woman with child.

The first three cases have respite by forty days, the fourth by thirty days, the fifth by forty weeks, or more if the child be not born.

6 Want of discretion, as it is of ideots, madmen, and of infants.

7 In poverty, in which case ye are to distinguish of the poverty of the offender, or of thing; for if poor people to avoid famine take victuals to sustain their lives, or cloaths that they die not of cold, so that they perish if they keep not themselves from death, they are not to be adjudged to death, if it were not in their power to have bought their victuals or clothes, for as much as they are warranted so to do by the law of nature; and although the law hath no respect but to the souls of offenders, nevertheless king *Edward* limited the quantity of robbery and larceny in *this manner*; that is to say, that none should be adjudged to death, if the larceny, or the stealing, or the robbery did not exceed twelve pence sterling; and note that king *Hen.* the first by *Randulph de Glanvile* ordained, that in all mortal actions, that where the action was encountered with an affimative exception, that the affirmation was first to be received in proof in favour of life; and thence it was that if one man accused another of felony, and he plead that he is not the man, the proof was awarded to the defendant to convince the other of lying, either by his body or otherwise. And so it is if the defendant say that he could not be at the

doing of such an act, at the day, place, or year named in the plaint, because he was then in another place, where by presumption he could not do it, or that he could not be there present; or if he saith that the thing came to him by good title, in favour of life the proof belongeth to the defendant peremptorily at his peril, to the overthrowing of the action, and the exception; but if the defendant soly deny the action, in such cases the proof belongeth to the plaintiff.

Of outlaws returned from exile, banished men, and those who have forjured the realm and returned, being taken and kept for a justifiable offence, the judgment is, that they be hanged till they be dead.

SECT. 17.

Of punishments in divers kinds.

THE corporal punishments of death being past, we are to come to corporal punishments venials, which are by open infamous penances; and first of punishments, tallions, or (like for like) which are in three cases, that is to say, in mayhem, wounding, and imprisonment, in which if the pleas be brought in by appeals of felony for revenge only, then belongeth the judgment tallion, or like judgment, as mayhem for mayhem, wound for wound, imprisonment for imprisonment.

And if pardonable in form of a trespass, then these judgments hold place, that the offenders make reasonable satisfaction to the plaintiffs, and afterwards that they be adjudged to do open penance according to the quantity of the offence.

Open penances are these; amendments of highways, causways, bridges, setting them up in pillories or stocks; imprisonment, and abjuration of the realm, exile, banishment, either from off the land, or from the town; from entring into such a place, or from going out of such a place, by ransom of such a penalty, by pecuniary junishment, or by other fine, and such other kinds of judgments penals. And if the offenders be infants, or otherwise in custody, that in such cases the guardians be adjudged to make satisfaction of the damages, and the guardians to betake themselves to the goods of the trespassers; but the open penance is to be suspended so long as they are in ward, so that according to the difference of the offences and the offenders the punishments were in manner as followeth; and first of false judges, who the more greatly offend for as much as they are in a higher degree than other people.

SECT. 18.

Of false judges.

OF false judges assigned, king *Alfred* ordained such

judgment, that the wrong they do to God whose vicegerents they are, and to the king who is put in so noble a place as is the seat of God, and hath given them so great dignity as to represent the person of God, and the conusance as to judge offenders, that first they be adjudged to make satisfaction to those they have hurt, and that the remainder of the goods should be to the king, saving all other rights, and all their possessions, with all their purchased lands should be forfeited in whose hands soever they be come, and that they be delivered over to false Lucifer, so low that they never return to them again, and their bodies that they be punished and banished at the king's pleasure, and for a mortal false judgment that they be hanged as other murderers; and for mayhem, wounding and imprisonment, that they have like for like, and the same law, and in the same condition.

The judgment of false judges ordinaries is not in venial judgments so penal, as it is of judges delegates before; but they are to make satisfaction to the parties plaintiffs, and to the king they are punishable by a pecuniary penalty, and disabled from all manner of jurisdiction whatsoever; and in cases mortal, and tallions, according as it hath been said before of other judges.

SECT. 19.

Of perjury.

PERJURY is a great offence, of which ye are to distinguish either of perjury of false testimony, or by breach of faith, or by each of the oath of fealty; of the first perjury ye are to distinguish, either of perjury mortal, or venial; if of mortal, then the judgment was mortal, to the example of apparent murderers.

And note that in all personal actions there belongeth such an award, that due satisfaction be made to the plaintiffs, and that the offenders be punished with corporal pains, which pains are to be brought out by ransom of money; and if of venial perjury, then that they be banished for a time, or for ever; and that their woods, meadows, houses and gardens be eradicated according to the example of murderers, saving that their heirs do not remain disinherited.

Of the other perjury ye are to distinguish, as breach of faith to the king, or to another person, and if to the king ye are to distinguish, whether as his tenant or not; and if the oath of fealty be in respect of land, and the fealty be broken in any of the points, then lieth the process and defaults aforesaid; and if of an oath not in respect of land, ye are to distinguish, whether of the common oath of fealty sworn to the king, for the re-

maining in his fee, and then only corporal punishment holdeth place, which passeth the punishment which should be adjudged to others not the king's offices, according to the king's pleasure.

SECT. 20.

Of the offices of justices in Eyre.

THE presentments of offences are *ex officio* by coroners, by sheriffs and bailiffs in turns and views of frank-pledge; by enquests and special justices, and by kings *ex officio,* or by their chief justices, or of their justices generals; and because that the one have not power to determine the presentments of such offences, nor to punish the trespasses, and the other who can will not, or do not that duty which of right they may do; or punish the innocent and spare the guilty; It was anciently ordained, that the kings by themselves, or by their chief justices, or by general justices to hear and determine all pleas, should go circuit every seven years, through all shires, to receive the rolls of all justices assigned, of coroners, of enquirers, of escheaters, of sheriffs, of hundredors, and of bailiffs, and of all stewards, of all their judgments, enquests, presentments, and all their offices, and to examine those rolls, whether any had erred therein, either in the law, or to the dam-

age of the king, or to the grievance of the people; and those things which they found not determined that they should determine them, and in the Eyre they should redress the officers, and punish the negligence of them according to the rules of law, and that they should enquire of all offences, which belonged to the king's suit, and to his jurisdiction. And note, that notwithstanding the king had the suits of all mortal offences, and of wrongs done to the law, and to the right of his crown, it is not thereby to be understood that he should have the suit of all offences; but if any one be plaintiff and doth not proceed in his suit after the same is affirmed, ye are to distinguish, if it be of a personal offence venial it sufficeth for the defendants, for the nonsuit of the plaintiff doth suppose satisfaction of the damage; and if it be of a mortal offence, yet the king hath not the suit, if not by warrant of appeal, or indictment, wherein it behoveth to the appellees and indictees that they make haste to acquit themselves, for none is bound to answer to any manner of action brought by them, because they are barred by an exception of mortal infamy, by being appealed or indicted.

SECT. 21.

Of the articles in Eyre.

EVERY shire used to be warned by forty days at the least, by general summons of the king's coming, where

after the essoins adjourned, and the assize of victuals set, and the ordinances proclaimed, and those of franchises adjourned, and the jurors called, sworn, and charged with their articles; and the claimers of franchises, and the rolls of the justices, of coroners, and of all sheriffs, and of all other manner of pleas and presentments after the last Eyre taken and received; the first thing was to inquire, hear, and determine the articles presented and brought in the last Eyre which were not ended, and afterwards to determine writs and plaints, to deliver visnes, to examine the rolls, to redress the errors, and all other wrongs by right judgments, without respect unto any person.

All the judges ordinaries, and assigned, sheriffs, bailiffs, and stewards of lords of manors, and all other who claimed jurisdiction, which any one could attaint of any wrong done against the right rules of law, were condemned for the wrongful judgments, with regard to the distinction of the parties grieved.

Coroners, escheators, sheriffs, bailiffs, and other ministers doing wrong to the king, or to the people, used to be punished according to the example of the other, and further according to the king's pleasure.

The offenders which were found using false scales and false measures, and gaining by breaking of any assize, either of bread, wine, ale, cloth, or other merchandizes, used to be set in the pillory, and women in the tumbrel, and afterwards were not suffered to mer-

chandize at any time, nor could they depart from the place or town to any liberty, because the usage was contrary to law.

Cut-purses taken *de facto* in their notorious sins used to be hanged, and for the cutting of purses and stealing of other goods under the value of twelve-pence, and less than six-pence, one of their ears used to be cut off without carrying them to prison, or before any judge assigned, and to banish them from the town, or from the manor, for the second offence.

And for their larceny under the value of six-pence they used to set them in the pillory for the first offence, and to banish them for the second.

In the judgments of personal trespasses, venials, as to the taxing of the damages put in plaints, *Martin de Patteshall* used this course; the judge used to enquire *ex officio* of the jurors, by whom any principal trespass was adjudged before him, the names of all those who were guilty in the first degree, and of the accessaries, and therein he proceeded to judge the damages according to the number of the indictors, so that no plaintiff should recover no more entire damages by plurality of plaints for one sole trespass against the trespassers severally.

SECT. 22.

Of franchises.

OF franchises note, that because the king doth not hold his rights and dignities of his crown but as an infant, nor a grant from him of any franchises is so established that kings cannot repeal them again, so as he give satisfaction to the value as by warranty; and it is lawful for every one who findeth himself grieved to sue for the king, to seise every franchise forfeited for contumacy; as if the bailiff of a franchise do not execution of the return of the sheriff according to the command of the king, by any abuse, as by using his franchise too largely, or not duly; by a writ ensuing, it is commanded that the sheriff enter into the franchise, and the king doth recover the seisin thereof, and so the same becomes guildable which was before a franchise.

And all those used to forfeit the franchise of keeping of a gaol in fee, who by title of franchise of infangthief, or of return of writs hurted not without delay, the persons taken in the places within the franchise for felony done in guildables, and send them into the gaol in guildable, so that the king do not lose the goods and chattels of the felons, nor his other rights; for the king giveth no franchise to his own prejudice, nor to the prejudice of others, especially of return of

writs, nor to have the custody of a gaol. An example may be as betwixt two neighbours in a franchise, the one cannot keep a prison to the prejudice of the king, and if he do he forfeiteth the franchise.

And it also appeareth, that jurors came out of franchises before the king and his commissioners to guildable and elsewhere at his command, as well upon criminal actions as upon reals.

And if any one receive a felon wittingly into his franchise, the same is now challengeable.

SECT. 23.

Of satisfaction of debts.

IF a plaintiff recover against many by judgment, he shall have but once damages, as in this case; if many persons owe one debt, and every one be bound in the whole, if one of them make agreement for the same, although he do not make a special agreement for all the debtors, all of them nevertheless are discharged, because satisfaction hath respect to the debt, and not to the persons.

SECT. 24.

Cases of disseisin.

IF the jurors in petit assizes are agreed that one shall give their common verdict for all, and if they

say that they know nothing, nor that the plaintiff shall receive nothing because he proved not his action; and if they be of divers opinions they are not therefor to be threatned, nor imprisoned; but they are to be severed and diligently examined. And if two jurors be found to agree amongst all the rest, it sufficeth for him for whom they speak, and they are not to be examined upon the title of the possession, but it is sufficient for the judge to know if the plaintiff were disseised of his land, whether it were rightful or wrongful according to the plaint; for though it were right, nevertheless it was tortious, because the tenant used force where he should have used judgment, and for that he made himself a judge therein, judgment is to be given for the plaintiff, so as he shall recover seisin, such as it is, saving every right by another writ; for an assise lieth not upon assise of the same tenement, betwixt the same parties, nor an attaint upon an attaint; and if the jurors for him, whether they were sworn upon the action, or upon the exceptions, judgment goes for him, and they behove to enquire of the others named in the writ, and if the disseisors came in with force and arms, although they hurt no person's body, all of them nevertheless are to be adjudged to corporal punishment, according to the quantity of the offence; and if they cast him out of his dwelling house, or out of his demesne, the felony of this burglary is punishable at the king's suit, or at the suit of the party; for

none is to be cast out of his house where he dwelleth, and which he hath used as his own for a year, without judgment, although he hath no title thereunto but by disseisin, or intrusion, and it sufficeth for force and arms, only the shewing of arms for to hurt the adversaries; and under the name of arms are contained bows, arrows, saws, lances, spears, staves, swords, and targets of iron.

The jury ought to enquire of the damages, that is to say, of the profits of the tenements since the disseisin, and to whose hands such profits after came, and of the charges, costs, and reasonable expences which the plaintiff hath sustained in his whole recovery, and in all things, and how much he is endamaged in distress of his goods, and in his honour; and the damages being assessed, it is to be awarded that the plaintiff recover his seisin, such as it is, according to the view of the recognitors, and the damages; and the disseisors are punishable according to the points of the offences.

For the goods found in the tenements whereof none can know the value, as charter, writings, royal treasure, and such things locked up, the plaintiff hath an action by appeal of robbery, or by a writ of trespass.

In judgment of larceny veniable satisfaction is to be made to the plaintiffs, to the double of the value of the things which are stolen; and in case of robbery, to the value (4 double) or four times value.

SECT. 25.

Of amercements.

A PECUNIARY pain we call an amercement, which follows real offenders, and mixt, and sometimes are certain, and sometimes uncertain. An amercement is certain, sometimes according to the dignity of the persons, as it is of earls and barons; for he who holdeth an entire earldom is to be amerced one hundred pounds when he is least amerced; and a baron for a barony entire one hundred marks, and he who holdeth less, less; and more, more; according to the quantity of the tenure.

And sometimes, by a certain assise in another case, as it is of escapes of people imprisoned, in which case ye are to distinguish, of the place; as where one escapeth out of the king's prison, or out of the prison of another; out of the king's prison ye are to distinguish of the cause, whether it be mortal or venial, and if mortal, then distinguish if the cause were adjudged or not, and if adjudged by notory of fact, or of right, then the corporal punishment is uncertain; for if the keeper, or more be assenting to the escape, punishment of death followeth thereupon; and if the cause was not adjudged, and the keeper was not the king's officer, nor assented to the escape, then the assise of punishment is so many

shillings sterling or more, according to the usage of the country, or of the place, or of the person.

And if the cause be venial, then the escape is not punishable.

And if the escape be from the prison of others, then ye are to distinguish of the cause, and of the caption, whether the cause be mortal or venial, and if mortal, then the pecuniary pain aforesaid holdeth place; and if the cause be venial, there is no punishment for the escape.

SECT. 26.

Of amercements taxable.

COMMON amercements are taxable by the oaths and affeerments of the peers, of those who fall in *misericordia,* according to the constitution of the charter of franchises, which willeth that a freeman be assessed when he falleth into an amercement according to the quantity of his offence, a merchant saving to him his merchandize, and a villain saving his wainage; and these affeerors are to be chosen by the assent of the parties if they will, but the king's officers are the more grievously to be amerced for the breach of their faith, etc.

Many cases there are where corporal punishments are bought in by fines of money, and such are called ran-

soms, which is as much as to say, redemption from corporal pains; whereof some fines are common, as for murders, others for personal trespasses of towns and commonalties; which fines king *Edward* ordained, that they should be assessed in the presence of the justices so as the names of them be put into the rolls of the justices, so that the estreats may come to the sheriff to levy the same by parcels, and not by total summons.

And in case where one recovereth debt or damages, king *Edward* enacted, that it should be in the election of them to do execution by levying such debt, and damages of the moveable goods of the debtors at the very value, to the value of the thing in demand, except the oxen, and beasts of the plough, together with the moiety of lands, and tenements of the debtors, if the goods be held sufficient by a reasonable extent until the debt and damages be levied.

Those who are appealed and indicted of felony, and are not to be found, it behoveth that they be proclaimed, and especially before the king, and his justices errants, and if they be found guilty, then they are to be commanded to put them in exigent, so that the first county after the Eyre be the first day, and so they be demandable at three county-courts until they be outlawed, if they tender not themselves to the peace.

SECT. 27.

Of the office of justices in Eyre.

To the office of justices in Eyre it belongeth especially to enquire by jurors, and by examination of the rolls of the coroners, of all that were outlawed after the last Eyre, and after certificate of their names they are to enquire of the names of their pledges, that is to say, whether they were in dozein, or in frank pledge, and if their pledges be in the same county then are the pledges punishable by a pecuniary pain, because they brought not those they took in main-prise to appear; and if they were elsewhere in dozein, then they are to enquire in whose main-prise they were, and they are punishable according to the example of the pledges for the same cause.

To help the memories of the people are escripts, charters and muniments very necessary to prove the condition and the points of contracts, gifts, sales, feoffments and other things.

By the statute of *Leuchfred* it was enacted, that one might deny nude contracts made by words, and it was ordained, that plaintiffs should prove their writings, which were denied, and not proveable by neighbours in *England,* and for foreign contracts by battle, or by the

setting to of other seals, or by jurors at the election of the plaintiffs.

If jurors have obscurely or doubtfully, or not sufficiently given their verdict in any action or exception; or any of the parties be grieved thereby; there is remedy by a commission of certificate to make the jurors come again, and the parties who are the plaintiffs ought to have under the king's seal, and of the judge, and of the parties, the proceedings of the plea before, and shew the defect, and the offence of the jurors; in which case if the judge by examination find it doubtful, the said doubt is to be reduced to certainty, and the obscurity to clearness, and the error into truth; and so the first judgment is to be redressed.

THE CONTENTS OF THE FIFTH CHAPTER.

	Section.	Page
Abusions of the common law	i	231
The defects of the great charter	ii	257
The reprehensions of the statute of Merton and Marlbridge	iii, iv	265
The reprehensions of the statute of Westminster 1	v	269
The reprehensions of the statute of Westm. 2, and of Gloucester	vi	275
The reprehensions of *Circumspecte agatis*	vii	286
The reprehensions of the new statute of merchants	viii	287

CHAPTER V.

SECT. I.

Abusions of the Common Law.

THERE are many who say, that although other realms use a written law, yet only *England* useth her customs, and her usages for law not written; but betwixt rightful and tortious usages there is a difference, for tortious usages not warranted by law, nor suffered by Holy Scripture, are not at all to be used: as for example; those of thieves, whose usages are to rob and steal.

And to shew some abuses holden for usages, which are frauds to the law, and repugnants to right, and which are not found justifiable by Holy Scripture, is this chapter made of a collection of part of the abusions of the law, and of persons erring from the knowledge of the right of law and from lawful usages.

Abusion is a disuse, or a misuse of right usages turned to abuses, sometimes by contrariety and repugnancy to law, sometimes by too large a usage thereof.

1 The first and chief abusion is, that the king is above the law, whereas he ought to be subject to it, as it is contained in his oath.

2 It is an abuse, that whereas parliaments ought to be, for the salvation of the souls of trespassers, twice in the year at *London,* that they are there but very seldom, and at the pleasure of the king; for subsidies and collections of treasure, and where the ordinances ought to be made by the assent of the king, and of his earls, they are now made by the king and his clerks, and by aliens, and others who dare not contradict the king, but desire to please him, and to counsel him for his profit, though the counsel be not covenable for the common people, without calling the counties thereunto, and without following the rules of law, whereby it followeth that many ordinances are grounded more upon pleasure than upon law.

3 It is an abuse that the laws, and the customs of the realm, with their occasions, are not put into writing, whereby they may be known, so as they might be known by all men.

4 It is an abuse, that force holds in disseisins after the third day of peaceable seisin, for as much as he is not worthy to be aided by the law, who flyeth from judgment, and useth force.

5 It is an abuse, that justice is delayed in the king's court, more than elsewhere.

6 It is an abuse to suffer any to be in the realm above forty days, who is of the age of fourteen years, *English* or alien, if he be not sworn to the king by an oath of fealty, and in some pledge and dozein.

7 It is an abuse, that clerks and women are exempted to make the said oath to the king, seeing the king taketh their homage and fealty for lands.

8 It is an abuse to hold an escape out of prison, or the breach of the gaol, to be a mortal offence, for that usage is not warranted by any law, nor is it used in any place but within this realm and in *France,* for as much as one is warranted to do it by the law of nature.

9 It is an abuse to suffer so many forms of writs to be pleadable, and therein especially that the writs are close, and not patents as the writs of right; and in that they are made with interlinings and rasure, and otherwise vicious.

10 It is an abuse that the money is not quarterable, that it is not silver, that it is held payable if the foreign circle be not whole, to allay the money *per* 18 *d.* and make paying of lead to every, etc.

11 It is an abuse that the king takes more than twelve pence for the exchange of twenty shillings in the pound.

12 It is an abuse that no pound is suffered to weigh twenty-five shillings, or more than twelve ounces.

13 It is an abuse that Treason is not adjudged more by appeals than it is.

14 It is an abuse that a man who hath done manslaughter of necessity, or with the peace, or not feloniously, is detained and kept in prison until he hath

purchased the king's charter of pardon of death; as it is for mischance.

15 It is an abuse to hold the moveable goods of flyers forfeited before they be attainted of the felony by outlawry, or otherwise.

16 It is an abuse to outlaw a man before it hath been enquired by the oaths of neighbours.

17 It is an abuse to suffer a man attainted of felony to be an approver, and to have a voice as a true man, and that clerks, women, infants, and others who cannot combat are suffered to be approvers.

18 It is an abuse that others receive the appeals of approvers, than coroners, and that they are suffered to appeal oftner than once, or by distress or otherwise, or in any manner falsly.

19 It is an abuse that the Justices drive a true man to be tried by his country, where he profereth to defend himself against the approver by battle.

20 It is an abuse to force people appealed by approvers to acquittals, where the approver put in his appeals, if he be not thereof elsewhere indicted, or after the lying of the approver attainted, or after the death of the approver.

21 It is an abuse to suffer an approver to live, after he shall be attainted of a false appeal.

22 It is an abuse to suffer thieves, and known and notorious felons, to be defended in sanctuaries.

23 It is an abuse that those felons who are forjudged

the realm are not suffered to chuse their port and passage out of the realm, and to limit their journies.

24 It is an abuse that they enter into the sea, and from the sea, the church next the sea, and that entries into great places are denied them, and that they have not the privilege of pilgrims.

25 It is abuse to adjudge murder for default of *Engleshire,* since murder ought to be the *English* punishment of an alien.

26 It is an abuse that acquittances of payments made to the king in the Exchequer are by tallies, and not by the seal appointed for it.

27 It is abuse that the king's officers of the Exchequer, have jurisdiction of other things than the king's monies, of his fees, and of his franchises, without an original writ out of the chancery under white wax.

28 It is an abuse that the king's debts lie dormant, and are delayed to be levied by estreats, since the arrears of sheriffs, and of other the king's receivers are to be levied without delay upon those who prefer them, if they themselves be not sufficient, and the arrearages of the debts of others are to be levied upon their sureties where the principals are not sufficient to pay the arrearages, the amercements are liable upon the assessors if the principals are not sufficient; and so it is of fines, and all other the king's debts; whereby it appeareth that no debt ought to be much behind. in so much as some think that none are chargeable with an old debt

if not of malice, or by negligence of the king's officers.

29 It is an abuse that they of the Exchequer, or other, receive attornies, or hold conusance without an original writ out of the chancery, which none can do without jurisdiction.

30 It is an abuse that freemen and freeholders have ordinary jurisdiction, but in the courts of lords of manors, or of hundreds or counties.

31 It is an abuse to amerce any man by reason of a presentment in personal trespass, in as much as no man is to be amerced but for the offence in a real or mixt action.

32 It is an abuse to amerce any man by a presentment made of less than twelve sworn freemen.

33 It is an abuse to assess an amercement certain, without the affeerment of freemen sworn to it.

34 It is an abuse to affeer amercements in the absence of those who are to be amerced.

35 It is an abuse to charge the jurors with any article touching wrong done betwixt neighbour and neighbour.

36 It is abuse to believe any one hath jurisdiction, if a commission give it not.

37. It is an abuse to obey the judge who is appealed of doing wrong, the example whereof appeareth in the old writ of right, *Et nisi feceris vicecomes faciat.*

38 It is abuse that a freeman be made the king's officer by any election against his will.

39 It is an abuse that the salaries of pleaders be not certain.

40 It is an abuse that the defendants have not amends of wrongful plaintiffs.

41 It is an abuse that pleaders are spared of oaths according to the points.

42 It is abuse to suspend a pleader if he be not attaint of a trespass, for which he is condemnable to corporal punishment.

43 It is abuse to summon a man for a personal offence.

44 It is abuse to adjudge a man to death by suitors, if not in cases so known, that there need no answer.

45 It is an abuse to bring the appeal elsewhere than before the coroner of the county, and that appeareth by the writ of appeal, as a writ grounded upon error.

46 It is abuse to let to bail a man appealed, or indicted of a mortal offence, by pledges.

47 It is an abuse to determine the appeals of felony by judges, ordinaries, suitors.

48 It is abuse that all persons are commonly receivable in appeals of felony.

49 It is abuse that all infants within age are in ward.

50 It is an abuse that people may alien their inheritances from their heirs further than the grants, or their purchase of lands make mention, for none can make an assignee, if it be not specified in the grant.

51 It is abuse that the inheritances of heirs females are held in ward (though it be of knights service) as of heirs males, since a woman is at age at 14 years.

52 It is abuse that gaolers or their sovereigns plunder prisoners, or take from them other things than their arms.

53 It is abuse that prisoners or others for them pay any thing for their entries into the gaol, or for their coming out.

54 It is abuse that a prisoner is laden with irons, or put to pain before he be attainted of the felony.

55 It is abuse that the gaols are not delivered of the prisoners, who are deliverable without delay, without a writ.

56 It is abuse to make a man to answer to the king's suit where he is not indicted, nor appealed.

57 It is abuse to imprison any other than a man indicted or appealed, without a special warrant, in case for want of pledges or main-prisors.

58 It is abuse that justices deliver prisoners not taken before the date of their warrants, since the king's intention was not but of those who are then kept in prison.

59 It is abuse that the writ of *Odio et atia* take no place but in murder.

60 It is abuse that that writ lieth for indictees.

61 It is abuse that appellees or indictees of mortal crime are got out of prison by bail, or those who are con-

demned to corporal punishment before they do their penance, or that they have bought in the same by fine and ransom.

62 It is abuse that the writs *Sicut alias et sicut pluries* pass the seal, in case where it should make those officers inobedient of right, and to the king, and should charge others to do such commandment.

63 It is abuse to put these words in writs, *Nisi captus sit per speciale præceptum nostrum, vel capitalis justiciarii nostri, vel pro foresta nostra, etc.,* for no special commandment ought to exceed the common law.

64 It is abuse to suffer the judges to be plaintiffs for the king.

65 It is abuse that aliens, or others who have not sworn fealty to the king or infamous persons, or indicted or appealed of mortal crime, or who have not an able commission, or after any wrong done, or after judgment given, be suffered to have jurisdiction, or to judge out of the points specified in their commissions.

66 It is abuse that in appeals by pleaders are the places, and the countries, and the hours of the days, and that it is against the peace, since every offence is against the peace, and such other words needless.

67 It is abuse to abate sufficient appeals, according to the statute of *Gloucester.*

68 It is abuse that the remedial writs are saleable, and that the king commands the sheriff, that he take sureties to his use for the writ, for and by the pur-

chase of these writs one may destroy his enemy wrongfully; and because that such fines and penalties run in estreats, though they do nothing but hurt to the purchaser thereof.

69 It is abuse that foreigners are not receivable in actions by sureties of freemen, who have not wherewith to find pledges.

70 It is abuse to distrain in personal actions, where the profit of the issues comes to the king, and no profit accrueth to the plaintiffs.

71 It is abuse that any plaint is received to be heard without sureties present, to testify the plaint to be true.

72 It is abuse, that it is said that villainage is not a frank tenement, and that an assize lieth not of an ejector for term of years, as well as it doth of a frank tenement for term of life, or in fee; for a villain and a slave are not all one, either in name or signification, for as much as every freeman may hold in villainage to him and his heirs, performing the services and charges of the fees.

73 It is abuse to hold that seisin accrued not to the purchaser when the donor left his goods, for as a contract of marriage is good by the consent of the wills of men and women, although that one of them repent, and after the marriage would withdraw himself, but he cannot thereby dissolve the contract; so as well it sufficeth to make the contract by the delivery of seisin as by the celebration of the marriage, although the purchaser

have no other seisin by taking the esplees, nor any deed, nor writing to testify the bargain; and if it were that a woman after the marriage were ravished and consented thereto, and the husband repleve her, and the ravisher answering to the contract say, that the husband had no right nor action, because he was never fully seised by taking the esplees; nor had no deed: or said, that he was never out of seisin of the woman because she was cloathed with his robes, and by her robe she remained in his seisin; this exception nothing availeth him to excuse his wrong no more than in this case. If a man buy a horse, and agree with the seller, and the seller deliver the same to the buyer, notwithstanding that the seller repent of the bargain, and forceably take back the horse, although the buyer hath no action for the same, because he remained always seised thereof at will; such exception is not good.

74 It is abuse to think that contracts for goods not moveables are otherwise than for moveable goods.

75 It is abuse to think that seisin accrueth not as soon to a purchaser of his purchase, as to an heir of his inheritance, since the law requires but three things in contracts. 1 The agreement of the wills. 2 Satisfaction to the donor. 3 Delivery of the possession and gift. If a transmutation of seisin be given to the purchaser by the donor at the hour of one of the clock, and the purchaser dieth at the hour of three of the clock he dieth as well seised of the tenement as he should be

of a woman, or a horse, though the donor have not departed with and removed his chattels; and it shall never be a good plea for him to say, that the freehold after the transmutation of seisin by a simple livery remained in the donor, after this livery of the tenement; but if the agreement of the donor be not performed according to the contract, then he may help himself thereby.

76 It is abuse to think that one cannot recover a term for years; nor presentments to churches in manner of disseisin, since many reasons may avail to redisseisors.

77 It is abuse that attaints are not granted in chancery without difficulty, to attaint all false jurors, as well in all other actions personals, reals and mixt, as in assizes brought.

78 It is abuse to drive a distress out of the hundred.

79 It is abuse to make the view of the distress to bailiffs, in that a plaint will suffice, and a court, and that he is yet seised thereof.

80 It is abuse that we do not sue for a tortious distress by way of felony, and that one attaint not these robbers at the king's suit.

81 It is abuse that vicious contracts are by agreements maintained by law, as forbidden of offence. Is not usury an offence? is not imprisonment an offence? how can one bind himself to usury, or to imprisonment, or a disseisin, if he do not offend.

82 It is abuse that advowsons of charters are aliened by law for years in mortgage, or to farm, or are partable.

83 It is abuse that leases of farms are not longer than forty years, since continuance of seisin by length of time doth disinherit no man.

84 It is abuse that no land is let to farm or in fee, or for years rendring rent by the year, more than the fourth part.

85 It is abuse to outlaw a man for a default, in case where the principal cause is not felony.

86 It is abuse that auditors are appointed by the lords to hear accounts without the assent of bailiffs.

87 It is abuse that bailiffs have no recovery of damages from tortious auditors.

88 It is abuse that regard is had to the persons, when such law is not for bailiffs against their lords, as *e contra* in the right of debts due by the one to the other.

89 It is abuse that a man may challenge one for his nief to whom he never found sustenance, in as much as a villain is not a villain but so long as he remaineth in custody; and since none can challenge his villain for villainage though he be in his custody, if he find not sustenance to his villain, or send him to some land in his manor where he may gain his living, or otherwise retain him in his service.

3 He hanged *Cadwine,* because that he judged *Hackwy* to death without the consent of all the jurors, and whereas he stood upon the jury of twelve men, and because three would have saved him against the nine, *Codwine* removed the three, and put others upon the jury, upon whom *Hackwy* put not himself.

4 He hanged *Cole,* because he judged *Ive* to death when he was a mad-man.

5 He hanged *Malme,* because he judged *Prat* to death upon a false suggestion that he committed the felony.

6 He hanged *Athulf* because he caused *Copping* to be hanged before the age of one and twenty years.

7 He hanged *Markes* because he judged *During* to death by twelve men who were not sworn.

8 He hanged *Ostline* because he judged *Seaman* to death by a false warrant, grounded upon false suggestion, which supposed *Seaman* to be a person in the warrant, which he was not.

9 He hanged *Billing,* because he judged *Leston* to death by fraud, in this manner he said to the people, Sir, all ye here but he who assisted to kill the man, and because that *Leston* did not sit with the other he him commanded to be hanged, and said that he did assist, where he knew he did not assist to kill him.

10 He hanged *Seafaule* because he judged *Olding* to death for not answering.

11 He hanged *Thurston* because he judged *Thurguer*

to death by verdict of enquest, taken *ex officio* without issue joined.

12 He hanged *Athelston,* because he judged *Herbert* to death for an offence not mortal.

13 He hanged *Rombold* because he judged *Lischild,* in a case not notorious, without appeal, and without indictment.

14 He hanged *Rolfe,* because he judged *Dunstan* to die for an escape out of prison.

15 He hanged *Freburne* because he judged *Harpin* to die, whereas the jury were in doubt of their verdict, for in doubtful causes one ought rather to save than to condemn.

16 He hanged *Seabright* who judged *Aihebbrus* to death, because he condemned one by a false judgment mortal.

17 He hanged *Hale* because he saved *Tristram* the sheriff from death, who took to the king's use from another's goods against his will, for as much as any such taking from another against his will, and robbery hath no difference.

18 He hanged *Arnold* because he saved *Boyliffe,* who robbed the people by colour of distresses, whereof some were by selling distresses, some by extortion of fines, as if betwixt extortion of fines, releasing of tortious distresses, and robbery there were difference.

19 He hanged *Erkinwald* because he hanged *Franklin,* for naught else but because he taught to him who

vanquished by battle mortal to say the word of cravant.

20 He hanged *Bermond* because he caused *Garbolt* to be beheaded by his judgment in *England,* for that for which he was outlawed in *Ireland.*

21 He hanged *Alkman* because he saved *Cateman* by colour of disseisin, who was attainted of burglary.

22 He hanged *Saxmond* because he hanged *Barrold* in *England,* where the king's writ runneth for a fact which he did in the same land where the king's writ did not run.

23 He hanged *Alflet* because he judged a clerk to death, over whom he had not cognizance.

24 He hanged *Piron* because he judged *Hanting* to death because he gave judgment in appeal before the forty days pendant the appeal, by a writ of false judgment before the king.

25 He hanged *Diling* because he caused *Eldon* to be hanged, who killed a man by misfortune.

26 He hanged *Oswin* because he judged *Fulcher* to death out of court.

27 He hanged *Muclin,* because he hanged *Helgrave* by warrant of indictment not special.

28 He hanged *Horne* because he hanged *Simin* at days forbidden.

29 He hanged *Wolmer* because he judged *Graunt* to death by colour of a larceny of a thing, which he had received by title of bailment.

30 He hanged *Therberne* because he judged *Osgot*

to death for a fact, whereof he was acquitted before, against the same plaintiff, which acquittance he tendred to aver by oath, and because he would not aver it by record, *Therberne* would not allow of the acquittal which he tendred him.

31 He hanged *Wolstor* because he adjudged *Haubert* to death at the suit of the king, for a fact which *Haubert* confessed, and of which the king gave him his pardon, but he had no charter thereof, nevertheless he vouched the king to warrant it, and further tendred to aver it by inrolment of the chancery.

32 He hanged *Oskitell* because he judged *Catling* to death, by the record of the coroner, whereby replication allowable the plea did not hold. And the case was such, *Catling* was taken and punished so much, as he confest he had mortally offended, and that to be quitted of the pain; and *Oskitell* adjudged him to death upon his confession which he had made to the coroner, without trial of the truth of the pain, or the fact. And further, he caused the coroners and officers accessaries to be apprehended, who hanged the people, and all those who might have hindred the false judgment, and did not hinder the same in all cases; for he hanged all the judges who had falsly saved a man guilty of death, or had falsly hanged any man against law, or any reasonable exception.

33 He hanged the suitors of *Calevot,* because they had adjudged a man to death in a case not notorious,

although he were guilty thereof; for no man can judge within the realm but the king, or his commissaries, except those lords in whose lordships the king's writ doth not run.

34 He hanged the suitors of *Dorcester,* because they judged a man to death by jurors in their liberty, for a felony which he did out of the liberty, and whereof they had not the conusance by reason of foreignty.

35 He hanged the suitors of *Cirencester,* because they kept a man so long in prison, that he died in prison, who would have acquitted himself by foreigners, that he offended not feloniously.

36 In his time the suitors of *Doncaster* lost their jurisdiction, besides other punishments, because they held pleas forbidden by the customs of the realm to judges, ordinaries, and suitors to hold.

37 In his time *Colgrin* lost his franchise of enfangthief, because he would not send a thief to the common gaol of the county, who was taken within his liberty for a felony done out of the liberty in guildable.

38 In his time *Buttolphe* lost his view of frankpledges, because he charged the jurors with other articles than those which belonged to the view, and amerced people in personal actions where one was not to be amerced by a pecuniary punishment. And accordingly he caused mortal rewards to criminal judges for wrongful mortal judgments, and so he did for wrongful judgments venials. Imprisonment for

wrongful imprisonments, and like for like, with the other punishments; for he delivered *Thelweld* to prison, because he judged men to prison for an offence not mortal.

39 He judged *Litbing* to prison, because he imprisoned *Herbote* for the offence of his wife.

He judged *Rutwood* to prison, because he imprisoned *Olde* for the king's debt.

On the other side he cut off the hand of *Haulf,* because he saved *Armock's* hand, who was attainted before him that he had feloniously wounded *Richbold.*

He judged *Edulfe* to be wounded, because he judged not *Arnold* to be wounded, who feloniously had wounded *Aldens.*

In lesser offences he did not meddle with the judgments, but disinherited the justices, and removed them according to the points of those statutes in all points where he could understand that they had passed their jurisdiction, or the bounds of their delegacy, or of their commission; or had concealed fines, or amercements, or other thing which belonged to the king; or had released or increased any punishment contrary to law, or procured the exercising or pleading without warrant, either by the property, by warrant of writ, or of a plaint of the possession, or *e contra;* or in the venial actions by words of felony, or *e contra,* or had sent to no party a transcript of his plea at the journey, or any of the parties wrongfully grieved, or done any other wrong in

disallowance of a reasonable exception of the parties, or to the judgment.

In his time every plaintiff might have a commission and a writ to his sheriff, to the lord of the fee, or to certain justices assigned upon every wrong which was done.

In his time law was hastened from day to day, so that above fifteen days there was no default nor essoin adjournable.

In his time the parties might carry away the parts of their pleas under the seal of the judges, or the adverse parties.

In his time there was no stay of writs, all remedial writs were grantable, as of debt by virtue of an oath.

In his time the judges used to take twelve pence of every plaintiff at the journey.

In his time plaintiffs recovered not only damages of the issues of the possessions, and of the fees, but recovered costs as to the hurts, and as much as one might lawfully tax, by the occasion of such a fact.

109 It is abuse that such a multitude of clerks are suffered to be made, whereby the king's jurisdiction is overthrown.

110 It is abuse that clerks have leases of that which belongs to the temporalty, and hold lay fees.

111 It is abuse that pleas hold upon Sundays, or other days forbidden, or before sun-rising, or in the night time in dishonest places.

112 It is abuse that none answer to a felony, or other personal action of trespass or scandal, before his age of one and twenty years.

113 It is abuse that when the action is affirmative to take the proof against the answer, or plea affirmative.

114 It is abuse that a man be accused of life and member, *ex officio,* without suit or without indictments.

115 It is abuse that the justices shew not the indictments to those who are indicted, if they require the same.

116 It is abuse that no man in *England* doth answer for a thing done out of the realm, *et e contra,* or in a privileged place, where the king's writ runneth not, for a thing done to a foreigner, *et e contra,* or within a place within a franchise, for a thing done in guildable.

117 It is abuse that rape is a mortal offence.

118 It is abuse that rape extends to others than virgins.

119 It is abuse to outlaw a man if not for felony.

120 It is abuse that one take in *England* any one outlawed in *Ireland,* or elsewhere out of the realm; or that one is put out of his fee by judgment of law of judges ordinaries, suitors.

121 It is abuse to count of so long time, whereof none can testify the hearing or seeing, which is not to endure generally above forty years.

122 It is abuse that a man have an action personal from a longer time than the last Eyre.

123 It is abuse of the writ of account, for which every one may imprison another wrongfully.

124 It is abuse that one is bound to render an account of issues of land whereof he is guardian by title of law.

125 It is abuse that the writ of *Ne in juste vexes* is so out of use.

126 It is abuse that battles be not in personal actions as well as in felonies.

127 It is abuse that proofs and purgations be not by the miracle of God where other proof faileth.

128 It is abuse to join battle betwixt persons who are not admitted to wage battle.

129 It is abuse that a knight is otherwise armed than another man in a combat.

130 It is abuse that judges have cognizance by original writ, or warrant by vouchers, or in others to which his jurisdiction extendeth not.

131 It is abuse to suffer a voucher to warranty in the king's writ of *Quo warranto.*

132 It is abuse that those who are found usurers by indictments after their deaths are suffered to be buried in sanctuaries, and that the lands do not escheat to the lords of the fees.

133 It is abuse that vicious obligations drive the authors to personal damages, in as much as they are voidables.

134 It is abuse to compel jurors, witnesses, to say

that which they know not, by distress of fine and imprisonment after their verdict, when they could not say any thing.

135 It is abuse to use the words (to their knowledge) in their oath, to make the jurors speak upon thoughts, since the chief words of their oaths be that they speak the truth.

136 It is abuse that one examine not the jurors, though they find at least two to agree.

137 It is abuse to put more words in the doing of homage; but thus, I become your man, for the land which I claim to hold of you.

138 It is abuse to answer or appear by attorney.

139 It is abuse to make justices such parties without the writ in the king's presence, if not with the assent of the parties.

140 It is abuse that the writs of *audita querela,* and conspiracy and others contain not the substance of the plaints.

141 It is abuse that the justices of the bench meddle with more pleas than of wrong done against fines, grand assises, translation of pleas out of lower courts, and of darrein presentment, and of the rights of the king, queen and their allies.

142 It is abuse to use a Pone when their causes are discussed, if the parties challenge the same, for a lying purchaser ought not to have benefit of his leasings.

143 It is abuse to sue forth grand distresses in pleas

of attachments, whereof the defaults are to the profit of the king, and not of the plaintiffs.

144 It is abuse that trespassers who have nothing, are not banished from towns, counties, manors, and hundreds as they used to be.

145 It is abuse to hold that a *petit cape* maketh other title but to save every right in real action, not in others.

146 It is abuse that the issues of grand distresses in mixt actions come not to the profit of the lords of the fees, and others who have courts, as they do to the king, of pleas moved in his court upon the same actions.

147 It is abuse to think the same punishment is to be to mainprisors, as to principals who make default, whereas they are amerceable only in courts.

148 It is abuse to amerce a man in plesive of fee, or of service, going out of the land by default in a personal action or real; for outlawry or loss of land is sufficient punishment.

149 It is abuse that sheriffs do not execution of writs *vicecountiels,* in as much as the plaintiffs have found pledges *de prosequend,* where there is no mention to take sureties.

150 It is abuse to distrain for arrearages of services issuing out of lands, moveable goods, whereas no distress ought to be but in the land only.

151 It is abuse that the tenant may without punishment enfeoff a third person of the land, of his lord

in prejudice of him, or do other thing, or say any thing against the points of his oath of fealty.

152 It is abuse to suffer a man who is a champion to be a witness.

153 It is abuse that none have recovery of wrong done by the king, or the queen, but at the king's pleasure.

154 It is abuse to judge a man to divers punishments for one trespass, as to a corporal punishment and to a ransom, since ransom is but a redemption from corporal punishment by payment of a fine of money.

155 It is abuse that people defamed of offence are not barred from making oaths, and of their dignities, and of their other honors.

And divers other abuses appear by those who well understand the writ before written.

SECT. 2.

The defects of the Great Charter.

SEEING how the law of this realm, founded upon forty points of the great charter of liberties, is damnably disused by the governors of the law, and by statutes afterwards made contrary to some of the points, to shew the defects or defaults of the points aforesaid, and the errors of some statutes, I have put in memory this

chapter of the defect, and reprehensions of statutes; and first of the defects of the points of the great charter.

To the point, that the church of *England* shall have all her rights and liberties inviolable; for first it were necessary to ordain a corporal punishment, and namely to the law judges, the king's ministers, and others, who judge clerks for mortal crimes to corporal punishments, infamatories, and do detain their goods after their purgation, and to those secular judges who take upon them cognizance in causes of matrimony, and testaments, or other special things.

The other point is, that every freeman of the realm inherit the liberties of the charter, and whereof every one is disseised as of his freehold, which is not adjudged according to the points following, there lieth no recovery of damages by the assize of *novel disseisin.*

A third point seemeth to be defective, for as the relief of an earldom entire was to decrease in him who held less, so it seemeth that that certainty was to encrease as much if an earl held more; so as he who held two earldoms, and who held an earldom and a barony, shall pay as an earldom and as a barony; and so of other fees if they be not expressed in the charter, that the fine of one hundred pound be not an earldom for no point increased, and so of other certainties.

The fourth point is defective (for although it be that such a point be grounded upon law, to bind the lord of

fees to warranties by taking of such homages, whether they took them of the right heirs or not) because it is not expressed who should be guardian of the fees in time of vacancy, and have the issues in the mean time in case where the right heirs fly from their lords, or cannot or will not do their homage.

In the points of wards it is defective, for as much as no difference is expressed between the heirs males, and the heirs females, for a woman hath her age when she is fully of fourteen years, and the seven years besides were not ordained first but for the males, who before the age of one and twenty years were not sufficient to bear arms for the defence of the realm.

And note that every guardian is chargeable to three things: 1 That he maintain the infant sufficiently. 2 That he maintain his rights and inheritance without waste. 3 That he answer and give satisfaction of the trespasses done by the infants.

The defect of the point of disparagements appeareth amongst the statutes of *Merton*.

And the default of frank benches and widows in the same manner, in which point it is sufficiently expressed that no woman is dowable, if she have not been solemnly espoused at the door of the monastery and there endowed.

In the point which requireth that the city of *London* have its ancient liberties, and her free customs, it is to be interpreted in this manner; that the citizens have

their liberties whereof they are inherited by lawful title of the gifts and confirmations of kings, which they have not forfeited by any abuse, and that they may have their liberties and customs which are sufferable by law, and not repugnant to the law. And where it is said (of *London*) that the interpretation be as well of the cinque ports, and of other places.

The point which forbiddeth tortious distresses for fees is covenable in itself, but the same shall not grieve any man of the realm who hath tenements, that it is no trespass in him, or by his ministers, as appeareth in the chapter of *Nativo habendo.*

The point which forbiddeth that Common pleas follow not our court, is to be interpreted in this manner; that the people shall not travel to sue in the king's household in the country, as they used to do. But this point willeth, that the plaintiffs have commissions to sheriffs, to lords of manors, and to justices assigned, so that right be done to the parties in certain places, where the parties and jurors may be the less travelled.

Although it be that the chapter command that *petit* assizes be taken in their counties, being made for the ease of jurors, yet it is disused, in as much as the justices make the jurors to come from the furthest marches of the counties, whereas it were better that the justices rode from hundred to hundred, than so to travel the people.

The point of amercements is misused by justices,

sheriffs, bailiffs, stewards, and others, who amerce the people in certain in this manner, putting such a one to so much for a contempt or other trespass without a personal trespass, and without the affeerment of the people sworn to it, and without specifying the manner and the quality of the contempt. *Cap.* 14.

Again, where the affeerors ought to be chosen with the assent of those who are amerced, and in a common place, the lords make the affeerors to come to their houses to affeer the amercements according to their pleasures.

The point which forbiddeth that rivers be defended is disused, for many rivers are now appropriate and gotten, and so put in defence, which used to be common to fish in the time of king *Hen.* I. *Cap.* 16.

The chapter which forbiddeth that sheriffs, constables, coroners, nor bailiffs shall hold pleas of the crown seemeth not needful, for appeals of felony are not here to be brought before coroners, and the exigents and judgments pronounced, and therefore this point had need to have had more words to have expressed the meaning of it. *Cap.* 17.

For the end of the chapter of the moveable goods of the dead, it appeareth that the action accrueth to the widows, and to the children to demand their reasonable parts of the goods of their father taken away.

That which is forbidden to constables to take is forbidden to all men, in as much as there is no difference

betwixt taking from another against his will and liberty, whether it be horses, victuals, merchandizes, carriages, or other manner of goods. *Cap.* 19, 20.

The chapter for holding the lands of felons for a year and a day is out of use; for whereas the king ought not to have the waste by law, or but the year in the name of fine for safeguard of the land from spoil, the king's officers take both.

The defence of the precipe is not holden in that they do it without writs of possession of farms every day, that the lords lose the cognizance of their fees, and the advantage of their courts.

The point, which commands that one measure be throughout the whole realm and one weight, is disused by merchants and burgesses, using for the pound the old weight of twenty shillings of right assize, and also of ells and other measures.

The defence which is made of the writ *De odio et atia,* that the king be not chancellor, nor take any thing for granting the writ ought to extend to all remedial writs, and the same writ ought not extend only to the felonies of murder, but it ought to extend to all felonies, and not only in appeals, but in indictments.

The point which forbiddeth that no bailiff put a freeman to his oath without suit, is to be understood in this manner, That no justice, no minister of the king, nor other steward nor bailiff have power to make a freeman make oath without the king's command, nor re-

ceive any plaint without witnesses present who testify the plaint to be true.

The point where the king granteth that he will not disseise, nor imprison, nor destroy, but by lawful judgment, which overthrows the statute of merchants, and other statutes, is to be interpreted thus, that none be arrested, if not by warrant grounded upon a personal action, for if the action be venial, no imprisonment is justifiable, if not for default of main-pernors. And so it appeareth that none is imprisonable for debt. And if any statute be made repugnant to this point, either for the king's debt, or for the debt of any other, it is not to be kept. That (none be outlawed) is to be meant, if not for mortal felony, from which one is saved by the oath of neighbours, *ex officio,* as it is the use in Eyres; and therefore that destroyeth the statute of outlawry of a man for arrearages of account, and all other the like statutes; and that which is said, that none be exiled nor destroyed, is to be interpreted in this manner, that every one have an action to appeal all persons, all suitors, all assessors who destroy men against the right course, and against the rules of law.

On the other part, where the king forbiddeth that none be disseised of his freehold, of his liberties, or of his free customs, is thus to be understood, That one shall recover by assise of *novel disseisin* every manner of freehold, and all manner of possession real of lands, or of franchises whereout one is cast, if it be not by law-

ful judgment; and these words, (if it be not by lawful judgment) refer to all the words of this statute.

The point which the king grants to the people, that he will sell no right, or hurt nor delay justice, is misused by the chancellor, who sells the remedial writs, and calls them writs of grace, and by the chancellor of the Exchequer who denieth acquittances of payments made to the king under green wax, and all those who delay right judgment or other right.

The point concerning leave for the staying of merchants, aliens, is so to be understood, that it be not prejudicial to the towns, nor to the merchants of *England,* and that they be sworn to the king if they stay longer than forty days.

The point which forbiddeth that none alien his land in prejudice of the lord of the fee, is to be interpreted in this manner, that no tenant alien the fee of his lord without his consent, or to hold in chief of the lord without increase of new service.

The point of the custody of abbies, and of religious places when they fall, is thus to be understood, that every lord have the keeping of his fee during the vacation.

The point that none shall be taken or imprisoned upon the appeal of any woman, for the death of any other than of her husband, is to be meant of such a woman which the husband last held for his wife, if in case there be many wives alive.

The points concerning sheriffs turns and views of frank-pledges are disused three ways; the first that sheriffs, bailiffs, and stewards take extortion of fines, in that they make the people to fine for what they are not occasioned which they call for beaupleader. The second, that they amerce the People for presentments upon personal actions. The third is, that they charge the jurors with articles touching trespass done by neighbour to neighbour, or of tenant, or of other lord than to the king.

The point which forbiddeth religious persons to purchase lands, overthroweth the statute afterwards made at *Westminster* of the same, for as much as the action of the chief lord is limited in so short a time, to hasten the king's action in prejudice of the lords of the fee.

The last point is of such virtue and of such meaning, as that the king hath the cognizance of trespasses done in such manner, as that the fee-tenants have their courts, and the cognisance of trespasses done within their manors, and also as well of real actions and Personals, as of mixt.

SECT. 3.

Articles upon the statute of Merton.

SOME points are reproveable amongst the statutes made at Merton after the Great Charter made, and

namely the point of redisseisins. Since the law doth not attaint any trespasser by enquest of office, and because pleas may perhaps avail the tenants, and should be by law allowable, assizes lie to the example of novel disseisin; and where it is said, that redisseisors be arrested and kept in prison, and afterwards that they be released is but an abuse of the law, which requireth that every one who is attainted of a personal trespass be punished by a corporal punishment, if he cannot ransom it by money; and that which is said of this statute is to be understood of all statutes made after the Great Charter, made in the time of king *Hen.* I. for it is not justice that he should be punished for one fault with corporal punishment, as imprisonment or other, and further by a pecuniary pain, or by ransom; for ransom is nothing but a buying out the corporal punishment.

The point of improvements of wastes is reproveable as being too general, for it ought to distinguish of commons; for in some places the commoners are enfeoffed in such manner that the whole common is only in the tenants, so that the lords have nothing but the soil, and in such case that statute is prejudicial to the commoners, and repugnant to the Great Charter, which willeth that none be cast out of his freehold, nor the appurtenances without lawful judgment.

The point of rape of marriages is reproveable, in as much that it hath an exception of persons of laymen,

and of clerks, for there is no more law that a clerk should offend without punishment than a layman.

Other points are repugnable; if the tenant do damage to his lord, or *e contra,* for they are not punishable according to the statute, but they are bound by their homage and fealty betwixt them, as it is before said amongst the judgments of defaults.

The points of making attornies in suits at hundreds, is to be understood in this manner; that although a suitor by this statute may make an attorney for him to save his default, yet none can give judgment by attorney; nor is a woman named in this statute, because that no judgment is to be given by a woman.

SECT. 4.

Of the statutes of Marlbridge.

SOME points of the statutes of Marlebridge are reproveable, and namely the first five points, because that every personal trespass is punishable by a corporal punishment, if the trespass be not bought in by ransom according to the quantity thereof.

The chapter which commandeth the Great Charter to be kept in all points is defective for want of addition of punishment, and it seems cross to make constitutions not holden.

The Chapters remedials of lords of fees is reproveable in the mitigation of punishment: for all those who do defraud the law, are punishable by corporal punishment, and not by a simple amercement.

The point of proclamation of wards is reproveable, as that which is founded upon error, as it appeareth in the chapter of defaults.

The chapter of redisseisors is reproveable, for that no special command ought to exceed common right, nor any pain of imprisonment is judgeable but for a wrongful imprisonment.

The chapter of days in dower is reproveable, since the law hasteneth right more in the king's court than elsewhere.

The chapters following of attachments and distresses are reproveable, for in pleas of attachments no essoin is allowable for the defendants, nor any such order of distresses is to be holden according to law.

The chapter which forbiddeth that none make his tenants jurors is reproveable, because that no punishment is therein ordained, and because it hath no exception; for there are many cases where the people ought to be jurors, though they come not by the king's command, as before justices of forests, before coroners, and before escheaters, and as in courts of sheriffs, and views of frank pledges, and as affeerers, and at gaol deliveries.

The chapter which commandeth the arresting of those who are bound to account is reproveable, since the ac-

tion is mixt, and requireth summons, and not personal arrests.

The chapter of wasters of farms is reproveable, for waste is a personal trespass, and requireth a personal punishment, and not a simple amercement.

SECT. 5.

Articles upon the statute of Westminster the first.

MANY chapters are reproveable of the statute of *Westminster*. For the points touching religious persons, are matter to gain monies, and a purchase upon a foundation of covetousness, more than for their advantage.

The chapter of clerks found guilty of felony, is reproveable, for want of addition of punishment, these clerks are not to be delivered to ordinaries, but at the pleasure of the king, and of his justices.

The chapter of wreck is reproveable, in as much as the finder is forejudged by the statute to have part thereof, whereas he ought to have part of the profit, and so it is reproveable, as to the awarding of the punishment.

Of the points of amercements is before spoken in the Great Charter.

The point of takings of distress is much reproveable, as before is said. *Cap.* 9.

The chapter concerning pursuing of felons to main-

tain the peace is reproveable in the punishment, for he is consenting to a felon who doth not apprehend him when he may.

In the same manner is it of the chapter of coroners, contained in the articles following.

The point of election of coroners was not needful to have been ordained, for it behoveth more the electors to have wise and loyal coroners than to the king, and it had better have been enacted, that the coroners do present the points of their office under the seals of the jurors, than sheriffs should make counter parts of the rolls.

The point of enquest of *odio et atia* is reproveable, for *London* and other places in liberties where there are no rights. *Cap.* 12.

The point of putting people found guilty of felony, who will not put themselves upon the country, to penance, it is out of use that one kill them, without having regard to the conditions of the persons, and therein it is reproveable, since one may perhaps help and acquit himself otherwise than by his country, and in as much as none is to be put to penance before he is attainted of the offence for which he ought to be pained.

The ordinances of punishment of long imprisonment are to be reprehended, as before is said.

The point of the order of outlawry of the principals before the accessaries is no statute, but a revocation of error.

The point of replevisals is reproveable, according as it is said of actions; the punishment of long imprisonment contain error as is said before.

The punishment of heirs males married, as against the king, without the consent of their lords, betwixt 14 years and 21 years is reproveable, for then the king should have amends for that, for which he hath not any personal suit for the amends.

The point of heirs females containeth error, as appeareth in the reprehension of the point of marriages in the Great Charter.

The point of tortious distresses ought to contain the punishment for the robbery.

The punishment of ministers, disseisors, by colour of their office is reproveable, for the smallness of it, as appeareth amongst the judgments.

The point which forbiddeth sheriffs, that they take no rewards is reproveable, in as much as the king taketh of them, and they take nothing of the king.

The point of fines of clerks, and the officers of justices in Eyre is reproveable, for the common grievance of the people without taking of profit.

The point of imprisonment are reproveable for the reasons aforesaid, and the point of tolls for the punishment of imprisonment, and because the tolls are not established certain.

The point which willeth that those who dis-use marriages, should lose them, was not needful to have been

made, for the law is, that he shall lose his franchise who useth it not.

The point of receivers of the king's monies, and not rendering the same is reproveable, for the smallness of the punishment, according to that which appeareth before.

The errors of taking of carriages and other goods, appeareth sufficiently by the reasons before.

The point which forbiddeth judgment to be given by strangers in counties is reproveable, for no judgment given by another than an ordinary judge assigned is to hold.

The point which maketh mention of robbery or disseisins is reproveable, for all those are to be seised upon whom the jurors indict of robbery, according to the example of thieves and other felons.

The point of attaint is reproveable, for it should not extend to one case, but it ought to comprehend all oaths taken by twelve men, if one of the parties complain thereof.

The point of limitations of actions is reproveable, for the reasons in the chapter given upon the same matter.

The point which forbiddeth falsities and abuses used in courts before this time to false judges, who used not the law by sufferance of falsities.

The point of champions is reproveable, for no champion is to be receiveable as a witness.

The point of not allowing essoins in assises after ap-

pearance, is reproveable by the assise of Novel disseisin, where no essoin is allowable for the tenants, no more before appearance than after, nor in no other personal action.

The other points of essoins are reproveable, for no false cause of essoin ought to advantage any man.

The point of delays in pleas of attachment is reproveable in many points, according as appeareth in the chapter of defaults.

The point to plead upon the surcharge falleth in prejudice of sheriffs, and of lords of fees, and of liberties; and although the two points of disseisins, that is to say, that every one may avoid the damages in the point of personal trespass done to his ancestors, in as much as his action lieth, of what age soever the parties be, yet is the first reproveable, for as much as the plaintiffs have no recovery for the damages done to their ancestors, nor any action, but to have restitution of the possession.

The other point is reproveable for the smallness of the punishment, but according to common right this punishment should have time, that he should never do homage betwixt them for the lord's forfeiture, when he beginneth to disinherit his tenant contrary to the right of homage.

The prayer of the king is reproveable, because he ought to ask nothing contrary to law, but it is the prayer of the justices who desire always to have much to do.

The point that if he who is vouched to warranty ought not to warrant, although he be bounden by the deed of his ancestor whose heir he is, in case he alledge that nothing descended to him from that ancestor by whose deed he is vouched, is reproveable, for according to the old law, lands remained liable to the debt, of those who acknowledged it, to whose hands soever the lands afterwards came.

In the same manner it used to be in all other contracts, where the contracts were adjudged or granted; and although nothing descended to the heir, for that he lost not the tenements for want of acquittance, and if he who bound himself to warranty would not warrant the land, nor vouch over, it appeareth thereby that the ancestor was tenant by a naughty title, and that he was possessor thereof by an ill way; and if the heir had nothing whereby to discharge him, the tenements bound to warranty should be recovered. And if the heir had nothing whereby to discharge, nor no land is found bound to the warranty, if the purchaser lost his purchase, it was at his own peril, and accounted his own folly, the better at any other time to look to his assurance.

SECT. 6.

Articles upon the statute of Westminster 2.

THAT which is said of the statute of *Westminster* 2, which faileth in many cases is now to be understood, for against all trespasses is the law made, although it be disused, or controuled by those who know not the law.

And the three first chapters are not statutes, but are the revocations of the errors of negligent judges, for the law permits not that a man make a better estate to another than himself hath, but requireth that every lawful contract be made according to the wills of the speakers; and that which is in the statute, that if a fine be levied in deceit of right, that the same be null is reproveable; but it might have been better said, that for fine, that no man be barred of his right, for the fine levied cannot be rightly said null, but it holds in force, and barreth at the least donor of his action.

The point of distresses doth not repeal any error, but affirm them, as before appeareth in the second book.

And that which is said in the second statute, that suitors in counties have no record, is but abusion, since every lawful testimony is a record, and every false testimony is a lye; and as lawful may other people testify as the justices assigned. Is not the same writ abused,

to grant to counties records in outlawries, pledges, mainprises, battles, grand assises, and other cases, and not other points? and to deny that the sheriffs or lord of the fee, or other to whom the king sendeth his writ, hath not as well record of process before him, as those whom they call justices, is but error.

And as to the causes of writs of pains is suffered great error, that that which is not warranted in the accessory, that he may in the principal, since the law permits that none be aided by a lye or a vicious writ.

Of the other side, because there is more realty in the statute than personalty, as more attachments are awarded in personal actions than in mixt and reals.

The point of mesnes is reproveable, as to the proclamation, and as to the non-acquittance of those who hold by less service than the mesnes, for be it that *B.* hold one hundred pounds lands of *D.* by the service of twenty pounds *per annum,* and the same *B.* give the moiety thereof in frankalmoigne, or frank-marriage, or to hold by the service of a rose, to *C.* if it happen that the same *B.* forfeited what he hath, by this statute no remedy is ordained for *C.* who was purchaser from *B.* and therefore the old course is to be holden which is said before in judgments.

The remedial statute of the right of the wife lost by the default of the husband is reproveable, for the old law was, that a woman after the death of her hus-

band should repleve her inheritance or purchase so lost, summoning the tenants, for a cape is not, but a distress and ejection of seisin saving every right; and it is lawful for one of the tenants in common to defend his right where he is damnified by the negligence or the non-ability of his partner. In the same manner may a woman according to law in the right of her husband; neither doth the law give to widows action to demand dower in the cases named in the statute, but in all cases the law enables her to be received by lawful reversing of the judgment.

And that which is contained that tenants may vouch to warranty, is but abuse; how holdeth voucher place where a writ lieth not, yet it is understood with a saving, that no jurisdiction of a judge assigned extend to other persons than those who are named in the writ, and that none shall vouch more than in the same writ are named, by writ of *Replegiare,* and therefore are warranties attainable and determinable by writs.

The statute following, which ordaineth new writs remedials after defaults, is prejudicial to lords of fees, who lose the advantages of their courts, because that writs of right are forbidden in such cases where they wont to be used.

Presentments to churches ought not to be but in the names of those, to whom the mere right of the advowson doth belong, according as is said before in contracts; and it is error and abusion of law to endow women of

advowsons, or to lease them to farm, or for the term of another's life, or in frank-marriage, or in mortgage, or in fee-tail, or otherwise than in fee-simple.

And those who receive clerks presented to churches, in prejudice of those to whom the mere right in fee doth appertain, are bound to make restitution of the damages, and those who have recovered to jurors, by whom they were certified of the right of the personage; and so it appeareth that the punishment lieth more against the bishops than the presentors.

And that which enacteth long imprisonment for a punishment, is but abuse; since none is imprisonable if not for a wrongful imprisonment.

The statute of warranties is but a revocation of error used against law.

The statute of admeasurement is reproveable in many points, as to the proclamations, since admeasurement and surcharge are to be by jurors.

The statute of mesnes is reproveable in many points, as it appeareth in the chapter of distresses, contracts, and defaults, and the same appeareth in the end of the statute where the plaintiffs know not a set fine.

The statute of suspension of writs in Eyres is reproveable, as repugnant to the Great Charter, which saith, we will sell no right, nor detain it, and wherefore are writs rebuttable from hearing, but for the multitude of writs which are, and for the small number of justices the right of many perish.

The statute of obligees in account is reproveable in many points, one as the exception to the persons, for the masters is ordained recovery, and to servants not, when auditors are assigned without the consent of the servant.

The other, that the auditors are not tied to allow any thing but at their pleasure without punishment.

Another, that the recovery is ordained by detinue of the servants, and not against the surety, nor the goods.

Another, that the lords are not to be attested according as of the servants.

Another, that the wickedness of auditors remained unpunished.

Another, of outlawry, for none is to be imprisoned if not for a tortious imprisonment.

The statute of appeals is reproveable in two points, one in the specialty of the corporal punishment, and of the plurality punishments, since the redemption by a pecuniary pain is but the buying out of the corporal punishment.

The other to have jurisdiction against the abettors without original writ.

The statutes of waste are founded upon error, since waste is a personal trespass, and requireth other manner of processes, as appeareth in the chapter of defaults; and to defend a personal trespass by writ is but a vain labour.

The statute of not allowing a false cause in the es-

soin *de malo lecti* is defective, for in no essoin for no party is any false cause, or any falsity to be permitted, nor ought to be profitable to any.

The statute of debt and damages recovered is defective, for not only should such remedy be in the king's courts, but it ought to comprehend in all other lay courts.

The statute of those who are dead without wills is defective, for it ought to comprehend felons and fugitives as well as true men; and the king, and all others into whose hands their goods come as well as ordinaries, for none can forfeit the right of another.

The statute for allowing one manner of exception in the like actions was not needful to have been made if not for the negligence of justices, for every affirmative is encounterable with his negative at the peril of the party.

The statute of detinue of service is a novelty dangerous to lords of fees, as appeareth in the chapter of defaults.

The chapter of making new writs had not need to have been made, if the first ordinances of writs were observed.

The statute to have remedy by assize of *novel disseisin* is reproveable, for as much as it comprehendeth not lands charged with villain customs, nor lands holden for term of years.

The point needeth not have forbidden false excep-

tions, if the pleaders held themselves to the points given in charge.

And as to the point of imprisonment, the statute is reproveable, for the reasons aforesaid, and also as to the pain of double damages, for the law giveth a man no more than is his demand.

And that which appeareth in the statute of false appeals is more error than right in the enacting the award of amends to defendants, whereas it is not to the plaintiffs.

And as to the writ to the use of sheriffs in disseisin, it is no statute, but it is a thing at pleasure, and a wrong.

And that which is used to grant damages in part, or in all to justices, or to clerks, or to ministers or others, should be forbidden, as a usage very full of damage to the people.

And as punishments are reproveable in *novel disseisins,* so are they in the statutes of disseisins, corporal punishments nevertheless hold in such personal trespasses, but in re-disseisins more than in disseisins.

The statute which forbiddeth that writs of *Oyer* and *Terminer* be not *ligirment* granted, is not founded upon any law, as being repugnant to the words of the Great Charter, We will not sell or delay justice to any man; but cometh rather from the temporal judges, who cause the same for their advantages, as desiring to embrace all pleas.

The statute of caption of assises thrice in the year is

reproveable, as to the adjournment of the parties out of the counties before the justices of the bench, who have no jurisdiction over those pleas, since the commissions are given to justices assigned.

And as to take juries and enquests in their counties, so the statute is not to destroy the authors and endamage the people.

The statute which forbiddeth justices that they cause not jurors say, but their advice is defective, as appeareth in the chapter of jurors.

The statute of exceptions allowables rebutted by justices is not founded upon law, as appeareth in the judgment of false justices, but is when it is in no part fixt.

The statute of rape is reproveable, for none can ordain by statute that a venial punishment be turned into a mortal without the consent of the pope or the emperor.

The statute that the king hath the suit in rape, or in elopement of women married, is reproveable, for none is bounden to answer to the king's suit if not by appeal, or by indictment.

And that which is contained in it, that women should lose their dower for the sin of adultery, ought also to comprehend all adulterers, who claim to hold the inheritances of their wives by the curtesy of *England,* so that there be no exception of persons.

The imprisonment of elopers of nuns and their ran-

som is no law, but is an error in a double manner, as before is said in many places.

The imprisonment for two years or more, ordained for a corporal punishment to ravishers of marriages is but error; for no corporal punishment ought to be ordained but for common profit, as before appeareth of open penances.

And that which is ordained of proclamations in personal actions is but abuse of law, as it is said in the statute of moignes.

The statute which awardeth ransom is reproveable, for ransom is nothing else than the redemption of corporal punishment.

The statute of distresses made by bailiffs unknown is distinguishable, for in tortious distresses without warrant the judgment of robbery holdeth; and by warrant is every one receivable, whether known or unknown.

The statute of jurors is reproveable, for the law wills that the plaintiffs have the aid of the courts to cause the witnesses to appear, whereby they may the more lawfully help themselves, without distinction of persons.

And that, that jurisdiction is granted to justices assigned to *Oyer* and *Terminer* plaints, without a special commission, is but abuse.

The statute which awardeth that writ of judgment be made without warrant of original writ, is nothing else than a license to falsify the king's seal.

The punishment of sheriffs ill answering is reprove-

able, as to the punishment; for disinheritors of the king offend of the crime of majesty, and are by consequence punishable by death, which ought not to be in such cases.

And as to issues the statute is reproveable, for no issues are awardable but after defaults in actions mixt, and not to the king's use, but for the profits of the plaintiffs.

The defaults made of the statutes of clerks, cryers, and other officers of the court are but idle, because they are not kept at all.

The statute that cognizances and inrolments which are made in the Chancery, the Exchequer, and before justices be established, is an authority of great ill; for by false inrolments might every one in authority destroy those he pleased, which should be a great inconveniency. Again, by this statute authority should accrue to authority to the chancellor and others, to falsify the king's seal by writs, to give judgment without original writs.

And therefore note, that none but the king can receive attornies in the king's court, nor recognitions betwixt parties without warrants of original writs.

The statute of improvements of wastes and commons of pasture is reproveable, and distinguishable according as hath been said before.

The statute to have view of lands is but a wrongful delay of the right of the plaintiffs; for the view appear-

eth sufficient by the certificate of the summons, upon what tenements the tenants are summoned.

The statute which forbiddeth that no officer of the court take any presentment of any church, nor other thing which is depending in plea, or in debate, is not kept.

Reprehensions upon the statute of Gloucester, 16 *Ed.* 1.

THE statutes to recover damages in pleas of possession enacted at *Gloucester* or elsewhere, and of the horrible damages in waste, are reproveable, for that the law giveth one no more than is his demand, and therefore it behoveth that the damages be mentioned in the writs, if damages shall be awarded; for a judge cannot exceed the points of his commission, and so it would be needful to use it according to the first ordinance of writs.

And the statute of tenements aliened of lands in prejudice of others is reproveable, for the remedy ought to be such as of guardians alieners, to the desinherison of the right heirs.

The statute of trespass pleaded in counties is reproveable for want of distinction, for small trespasses, debts, covenants broken, and such other kinds not exceeding forty shillings. Suitors have power to hear and determine without writs, by warrant of jurisdiction ordinary, and by writs granted afterwards; for sheriffs have

more jurisdiction in their writs vicontiel than justices of the bench by the Pone.

And as to the recovery of twenty shillings or more, in right of essoin of the king's service not warranted, the statute is reproveable, for that essoin might be cast where the defendant would make default by the adverse party, and so he should have advantage of his malice.

The statute which forbiddeth the abatement of appeals is not observed.

The statute which awardeth an innocent man to remain in prison, or to have no manner of punishment for necessary manslaughter, or by mischance, where no offence is found, is but an abusion.

The statutes making mention of *London* ought to extend commonly throughout the whole realm.

SECT. 7.

The reprehensions of Circumspecte agatis, *Ann.* 13 *Ed.* 1.

THE first point which saith, that the king's prohibition holds not in correction of mortal offences, where pecuniary pain is enjoinable by ordinaries, is founded upon open error, and usage to enjoin a pecuniary pain for a mortal offence, notwithstanding to destroy the king's jurisdiction.

The other points to compel the parishioners by corrections to enclose church-yards, to offer, to give mortuaries, monies for confessions, chalices, lights, holy vestments, and other adornment of churches are more grounded upon interest than amendment of souls; and note, that after that they are offered to God, that they are so spiritual that they are to be expended but in alms, and spiritually, for they are never to be converted to lay uses.

And then if any parishioner, for the hurt of the parson of the church, keepeth back his tithes, or stealeth them away, or doth not pay them duly or fully, the same is not punishable by a pecuniary pain, but by a corporal punishment.

For the excommunicate no pecunial pain was to be for restitution or satisfaction, no more than of a Pagan or a jew, and if they do demand a pecuniary pain, there the king's prohibition lieth, and much more in the demand of pensions, or of damages of trespass, or of defamation; but of pleas of correction where one pleads only *pro salute animæ,* the king's prohibition lieth not.

SECT. 8.

The statute of merchants.

THE new statute of debts is contrary to law, as it appeareth in the chapter of contracts; for every im-

prisonment of the body of a man is an offence if not for tortious judgment, and the law will not suffer any obligation, or vicious contract by intermixture of offence, and therefore it was to be avoided as grounded upon an offence; for no honest man ought to agree to such a contract which causeth him to offend, or to be punished.

Again, it is contrary to the Great Charter which enacteth, that no man be taken, nor imprisoned if not by the lawful judgment of his peers, or by the law of the land.

Here endeth the *Mirour of Justices,* of the right laws of persons according to the ancient usages of *England.*

The end of the fifth chapter, and of the whole book.

FINIS.

THE
DIVERSITY OF COURTS

AND THEIR

JURISDICTIONS

COMPILED ANN. 21 HENRY VIII. IN FRENCH, TRANSLATED INTO ENGLISH ANN. 1646.

BY
W. H. *i. e.* WILLIAM HUGHES,
of *Gray's Inn*, Esq.

The Second Edition, corrected and payed as the former.

WASHINGTON, D. C.
JOHN BYRNE & CO.
LAW PUBLISHERS AND BOOKSELLERS
1903

THE DIVERSITY OF COURTS, ETC.

It is to be understood, that the king is the fountain of justice, and to that purpose ordaineth judges, that justice be administered to all his subjects.

The king himself, for the excellency of his person, may sit and give judgment in all causes personal or real, betwixt party and party, but he cannot sit in person in judgment in any cause where he himself is party, or where the things of his crown or dignity are concerned; as upon an indictment of treason, or upon an appeal of murder or felony, or upon an action brought by himself as formedon of land, of which the right is descended to him from a collateral ancestor, or in an action of debt, by reason of the affection moving him to be favourable to himself; and therefore he maketh his judges to sit and hear such matters in difference, and to do justice to the parties.

And the place where the judges sit to minister justice are called courts, which are of divers kinds, and the judges thereof have several authority.

Of the court of Marshalsea.

And first, the court of Marshalsea is an ancient court, and made for the well government and ordering of the king's house, for the preservation of the king and his servants; and this court hath its bounds within which it hath jurisdiction, and not without.

The judges of this court are the steward and marshal of the king's house, for in them under the king is the ordering of the household, etc.

The title of the court is, *Placita coronæ, Aula hospitii domini Regis tent' coram seneschallo et mareschallo hospitii domini Regis, etc.*

And this court hath power to enquire of treason, murder, felony, and to take appeals of them, and of mayhem if they be done within the verge, betwixt persons who are of the king's house.

And if one of the household sueth another who is not of the household, he may plead to the jurisdiction of the court; and if they will not allow of the plea, he shall have a writ of error, and the judgment shall be reversed in the King's Bench.

And if one of the household sued another of the household, and the plaintiff be put from his service depending the suit, the other shall shew the same and abate the writ; but quære if it be so, if in case the defendant be removed out of service, etc.

The coroner of the Marshalsea shall sit with the

coroner of the country upon the death of a man, and if the plea may be determined before the king remove out of the verge it shall be, otherwise it shall be at the common law.

The King's Bench.

THERE is another court of high authority called the King's Bench, and the judges of that court have authority to enquire of, hear, and determine pleas and things touching the crown; as high treason, murder, manslaughter, robberies, felonies at the common law; and by statute law, mayhems, trespasses, burglaries, and all deceits and falsities whatsoever; but they have not authority to hold pleas betwixt party and party by original writ, but in special cases.

They have power to proceed in and determine indictments, and presentments taken within any county within the realm where the king's writ runneth, if it be certified by *certiorari,* or be delivered under the hands of the justices of the peace, or other justices before whom the indictments or presentments be; whether it be of treason, felony, forcible entry, riot, or any other thing against the peace; and they have authority to reverse judgments given in the Common Pleas, by a writ of error, or before justices of assise, and in liberties and franchises, but not in *London;* for a writ of error of a judgment given before the sheriffs

of *London* shall be reversed before the mayor in the Hustings.

And erroneous judgments given before the mayor in *London* shall be reversed at St. *Martin's* before special commissioners assigned to that purpose; and thereupon a writ of error shall be directed to the mayor to have the record and proceedings thereof, and the record shall be certified by the recorder, etc.

And it is said, that if an erroneous judgment be given in *Ireland,* it shall be reversed in the King's Bench by a writ of error, for that in *Ireland* the laws of *England* are used.

And if an erroneous judgment be given in the cinque ports, it shall be reversed in the King's Bench, and the writ shall be directed to the warden of the cinque ports, and he shall return the writ and the record, etc.

The king may have a formedon in the King's Bench, debt, detinue, and every other action, and a *quare impedit* at his pleasure. And a common person may bring an action of trespass *quare vi et armis* in the King's Bench, and actions for forging of false deeds, maintenance, conspiracy, actions of deceit, upon the case, or supposing any falsity and deceit, where the king shall have a fine, etc.

And note that there are some actions upon the case, which shall be sued in the King's Bench, and some not; as an action upon the case against one supposing that the defendant hath sold land to the plaintiff for a cer-

tain sum of money, and that he covenanted to enfeoff him by such a day, and not by any deed, etc., or to build a house such a day, and did not do it, etc., such actions shall be brought in the same court; but there are other actions upon the case, which shall not be brought in the King's Bench; as if a Horse be stolen out of the common inn, an action upon the case lieth against the hostler, but not in the King's Bench, as it is said. And so it is where a man is so bounden to keep his fire, that the same hurt not his neighbours houses, etc.

And note, that the chief justice of the King's Bench is made by writ, and not by patent, and it is to this effect; *Rex dilecto et fidel. suo I.* Fitz-James Sal'tem. *Quia volumus quod vos sitis capital. justiciar. noster ad placita coram nobis tenenda vobis mandamus quod officio illi intendatis;* but he shall be sworn by the chancellor of *England* before he take upon him his office.

The other justices of the same court are made by patent, *viz.* by these words; *Constituimus, etc., unum justiciar' nostr. ad placita coram nobis tenenda, habend. et occupand. officium illud quam diu nobis placuerit.*

And if a king maketh a judge to hold and enjoy the said office by himself, or his sufficient deputy for life, the grant is void as to the deputy, and if the grant be to him and his assignees, he cannot make an assignee, etc.

The Common Pleas.

And note, there is another court called the Common Pleas, which court hath jurisdiction to hold Common Pleas, as well personal pleas as real, or any other *præcipe quod reddant,* of lands or tenements, etc., of debt, detinue, account, and other personal actions; and they have power to hold plea of any of those actions, which may be brought in the King's Bench, as actions of maintenance, conspiracy, forgery of false deeds, and actions upon the case, and trespass against the peace, of such actions wherein the king ought to have a fine, and also of attaints; but they have not power to hold pleas of appeals of murder, rape, felony, mayhem, nor to enquire of them nor of riots.

And it is said, that one may sue the peace against another, before the justices of the Common Pleas, and if the Party be in the hall, or in the Place, or within their view, they may send the warden of the Fleet to bring the Party before the justices to find sureties, or else commit him to the Fleet; and the reason why they may so do is, that good order, and the peace be kept about the court; but the justices have not power to award process to the sheriff to arrest the party to appear in the court where the Common Plea is; but it is otherwise of the King's Bench, as it is said, etc.

And it is said, that the justices of the Common Pleas have jurisdiction in some things which touch the crown, and to enquire and hold plea of some felony, and also of misprision, and of deceit done within the court, and within the record thereof.

And if one imbezil a panel after the enquest passed, and judgment given in the Common Pleas, by which the judgment is reversable by error for want of that panel; the justices of the Common Pleas have power to enquire of the imbezilment of the panel by twelve of the officers and attornies of the same court, and they shall be sworn before the justices to enquire of that default; and if they indict the imbezilers they shall be arraigned thereupon, and shall be compelled to answer thereunto as other felons, etc., and if they be attainted they shall forfeit their goods and chattels, *tamen quære, etc.*

And if one be condemned in debt, or trespass in the Common Pleas, and he be in the hall, the justices at the prayer of the plaintiff may send the warden of the Fleet to bring him before them to satisfy the party the money, or otherwise commit him to the Fleet.

And when he appeareth, and will deny that he is the same person, then *quære* what shall be done, if the justices may commit him to the Fleet or not? And some say not, for that they know him not as judges, but as other men by information of the parties, and the plaintiff cannot maintain that he is the same person,

because he cometh not in but by information of the party plaintiff, and not by process of law; *quære* what is to be done in that case?

And see another difference betwixt the judges of the one Bench and of the other; for it is said, that if the judges of the King's Bench do award process in a formedon, a writ of right, or execution of land recovered in value, the sheriff ought to execute the writs although they have not any jurisdiction therein. But if the judges of the Common Pleas will grant process of treason, etc., out of their place, the sheriff ought not to execute the process, for that authority is only of Common Pleas, etc.

The chief justice of the Common Pleas is made by patent, *viz.* by these words, *Constituimus ipsum capital. justiciar. nostrum de co'i banco, etc., habendum illud cum feodis, vadiis et regardiis, eidem officio debit' et consuet'.* And the other judges of the same bench are made by letters patent, etc.

The Chancery.

And note, that the court of Chancery is a court of a high nature, out of which court issue all original writs, and there a man shall traverse offices and such things; and in that court women who are widows, to the king shall be sworn that they shall not marry without the king's licence, before the time that they be endowed;

and it is said, that of error there upon a patent, or a traverse, the same cannot be reversed elsewhere but in parliament. *Quære, etc.* And in that court a man shall have remedy for that which he can have no remedy at the common law; and it is called by the common people, *The Court of Conscience.*

And therefore see of matters in conscience, how the party shall have remedy.

If a man hath feoffs to his use, and maketh his will, and thereby willeth that his feoffs should make an estate to *I.* for term of his life, the remainder to *C.* in fee; if the said *I.* will not take the estate what remedy is for him in the remainder, in conscience, and how he shall help himself in Chancery, etc.

A man shall have remedy in Chancery for covenants made without writings, if the party have sufficient witnesses to prove the covenants, and yet he is without remedy at the common law, etc. And for evidences, when a man knows not the certainty of them nor in what they are contained; it is usually to be relieved in Chancery, for he is without remedy by the common law, etc.

If a man infeoffeth another of certain lands to his use, and the feoffee selleth the land to another, if he giveth notice to the vendee at the time of the sale of the intent of the first feoffment, he is bounden to perform the will of the first feoffor, as it seemeth in the Chancery.

A man was bounden unto another by obligation in a certain sum of money, and the obligee brought an action upon the same deed in another county than where the obligation was made, and had judgment to recover; and the obligor in Chancery sued to be relieved, and it was surmised that by that foreign suit he was ousted of divers pleas which he might have had, if the action had been brought in the county where the obligation was made, and it was conceived a good matter to relieve him in equity.

In the court of Chancery a man shall not be prejudiced by mispleading, or for want of form, but according to the truth of the cause, judgment ought to be given according to equity, and not *ex rigore juris*. And note that there are two jurisdictions, ordinary, and absolute; ordinary is as positive law, and absolute is *omnibus modis quibus veritas sciri poterit.*

If a man be bounden by obligation unto two men unto the use of one of them, and one of them, *viz.* is he to whose use it is not, releaseth to the obligor all actions, so as the obligation is discharged, he to whose use the obligation was made hath good remedy in Chancery by subpœna against his companion who released him, but against the obligor it seemeth he hath no remedy, for every man is bounden to help himself, and it is lawful for a man to get a discharge of that which he is charged withall, and in danger to others.

And if a man hath recovered against another debt or

damages, and he hath paid the same without any acquittance, or without having a release, and notwithstanding the party taketh execution against him upon the same judgment, he shall have no remedy by the common law; and it was then said by the Chancellor that he shall not have any remedy in equity in this case; and if the same should be remedied in equity, then every record should be examined before him, and thereby the common law overthrown.

And if I do enfeoff one upon trust, and the feoffee doth infeoff another of the same land upon trust, *quære* if I shall have a subpœna against the second feoffee, but where he is infeoffed *bona fide,* there the first feoffor is without remedy against the second feoffee, as it seemeth.

It is said, that the Chancellor of *England,* whersoever he shall be in *England,* hath power to command a man to prison, and he shall not be bailed; *quære* whether the justices of the one bench, or of the other, out of their Courts have the same authority or not.

The Exchequer.

The court which is commonly called the Exchequer, is properly for accomptants, sheriffs, escheators and the like, and there they are compellable to make their accounts according to the usages and customs of the same

court, etc., and it seemeth to be a court which is much for the king's profit, for there all remedies are provided, how the debts and duties to the king shall be levied.

And in that court the barons are judges betwixt the king and his subjects, and they are sworn thereunto; and fines, issues and amerecements which are assessed in other of the king's courts, the estreats shall be made thereof to the court of Exchequer, and there they shall write forth process against the parties to answer thereunto, and to satisfy the king what is due to him, and of divers other matters they have power and authority by reason of their office, etc.

The Cinque Ports.

THERE are also divers other courts, and inferior places where justice is ministred, and in those places they have judges, as in the Cinque Ports, and such places which have conusance of pleas, and also in Court Barons, in which courts is justice done according to law, etc. And although they of the Cinque Ports ought to be impleaded of their lands within the jurisdiction of the Cinque Ports, yet that holdeth only where the tenant sheweth the same, and taketh advantage thereof if he be impleaded in the king's courts, of things which are within that jurisdiction; but if the tenant be sued

in the Common Pleas, for lands within the Cinque Ports, if the demandant doth recover by default, or if the tenant appear, and plead any matter which is found against him, so that the demandant hath judgment for to recover the land, that judgment shall bind him for ever, etc. But the tenant might have alledged, that the land was within the Cinque Ports, and by such plea the king's courts should be ousted of the jurisdiction, etc.

And so it is of lands within an ancient demesne, if a writ be brought thereof in the Common Pleas, if the tenant appeareth and pleadeth, and doth not take exception to the jurisdiction, and the plea be found against him, so that the demandant recovereth, the tenant shall not reverse the judgment by a writ of error, because the tenant might have taken exception to the jurisdiction of the court, and it should have been allowed, etc. But yet the lord may reverse that judgment by a writ of deceit, and shall make the land ancient demesne as it was before, etc.

And if one hath conusance of pleas in a town or in a manor, and a writ is brought in the Common Pleas of the same land, and the tenant pleadeth, and judgment is given against him, the recovery is good, for it is within the power of the king, and the writ of the Common Pleas doth take place there; and if the bailiff, or lord doth not demand conusance, the judgment is good. But in another action, the bailiff shall have conusance

for that the nature of the land is not charged, and so see that where a man hath conusance of plea, etc., it ought to be demanded by the bailiff, or the lord, and the tenant shall not demand the same, if he be impleaded in the king's court; but of the ancient demesne there it behoveth the tenant to shew the same, and plead to the jurisdiction, etc., if he will have advantage thereof, etc.

And so note, that in the Cinque Ports there is such a liberty that the lands and tenements are pleadable there before the barons, etc., and yet if one be impleaded at the Common Law of lands within the Cinque Ports, the barons shall not have conusance of the plea, but the tenant may plead the same to the jurisdiction in abatement of the writ, etc.

The Court Baron.

Note also that there is another court which is called Court Baron, in which court the suitors are the judges, and not the steward; and they hold plea of contracts within the jurisdiction, etc., and yet it is said by some, that the defendant shall not shew that the contract was made out of the jurisdiction, and pray that the plaintiff be examined as in a court of Pipowder.

The judges of the Court Baron have authority to hold plea before them of debt upon contracts, or detinue, but not of detinue of charters, nor actions of debt upon a

judgment in a court of record; but otherwise I think it is of a recovery in the same court; nor shall they hold plea of maintenance, forgery of false deeds, of deceit, nor of *decies tantum,* nor of pleas of accounts, for they have not authority to assign auditors. They shall not hold plea of debt above the sum of forty shillings, unless it be by prescription; and they shall not hold plea of freehold by plaint, but by a writ of right they may. But if a judgment be given of freehold upon a plaint, it is said it is good until it be reversed by a writ of false judgment, *tamen quære, etc.*

And note for what suit a man shall be judged in a Court Baron, and it is said, that it is where a man is seised of lands in fee-simple, and which he holdeth by service of suit at the lord's manor, that suit is properly suit-service, and for such suit he shall be judged in a Court Baron, and for no other suit as it is said, etc.

And *quære* also, when erroneous judgments are given, how they shall be reversed, *viz.* when by writ of false judgment, and when by a writ of error. And some say, that in all courts where the party might remove the plea by a *recordare* upon a judgment given, in such courts a writ of false judgment lieth; as in ancient Demesne, Court Baron, County Court, and Hundred; but in other courts which are of record, the plea shall be removed by a *certiorari,* and upon judgment given in such courts which are of record, it shall be reversed by writ of error, etc.

And if a man recovereth in a court of record by erroneous judgment, and sueth not execution, some say, that a writ of error lieth, and the party shall have a *supersedeas* if he will pray the same; but if a man hath judgment in a Court Baron, and taketh not forth execution, no writ of false judgment lieth; *quære* the reason thereof, and what the law is in that case.

And note, that sometimes the sheriff is judge, as in re-disseisin, waste, and admeasurement, and the process shall be served by the baily, as is said.

And note, that the sheriff is an officer to the king's court, to execute the process thereof; yet sometimes the coroner is the officer to the court where defect is found in the sheriff, etc., so that he cannot by law indifferently execute the process as for divers apparent causes, yet if the sheriff dieth, the process shall not go to the coroner, but shall stay till another sheriff is chosen, etc. And because the sheriff is an officer appointed by the law to attend the king's courts, a man shall not take an averment against the return of the sheriff directly, and the reason is, because where justice ought to be ministred and executed, those who have the government of the law ought to repose trust and confidence in some person; and if every one might aver against that which the sheriff doth, then justice should not be executed, but should for ever be delayed, etc.

The means and the remedy how a man may come to his due, and to that which is wrongfully kept from

him, and that is by plea, and this word is general, and hath divers effects implied therein, and may be divided into divers branches, *viz.* into pleas of the crown, as appeals of death, robbery, rape, felony, and divers other things, etc., and into actions real, whereby lands, tenements, rents, and other hereditaments are demanded, as writs of right, formedon, etc., or actions possessory, as writs of entry, assise of mort d'ancestor, cosinage and the like, etc. And it may also be divided into actions personals, as debt, trespass, detinue, etc., and into actions mixt, as into assizes, and actions of waste, which are as well in the realty as in the personalty. A personal plea may be divided into two parts, one into a mere personal plea, as an action of debt, detinue, where none hath interest but the parties themselves, the plaintiff and the defendant. And the other part is mixt in the crown; the plaintiff and the defendant have not the sole interest in those actions, but the king hath an interest in them also to have a fine; as in an action of trespass, *vi et armis,* and that is an action mixt with the pleas of the crown, etc.

And note, that in matters of the crown, for such for which a man shall suffer death, some may be principals, and some accessaries, as murder, felony, rape, and the like; but in high treason I conceive all are principals, and in petit treason there may be principal and accessary as well as in felony.

In a præmunire all are principals, and in cutting out

of tongues, and putting out of eyes, there may be an accessary as well as a principal, as is said, etc.

In robbery all are principals who are present at the time of the robbery done, otherwise it is in murder; for if one be present and doth nothing, he is an accessary, and not a principal, etc. In mayhem some say, that all are principals, as well he who is comforting and abetting, as he who giveth the mayhem; as it is in trespass, *tamen quare,* for I conceive the law to be contrary, etc. And it was said, that if a man be present at the death of a man, and moveth another to kill the man, that he is a principal, notwithstanding that he giveth him not any stroke, and notwithstanding that the count in every appeal is, that every principal did mortally strike and wound him, etc., but those are words of form, and the blow of him that struck is the stroke of him who commanded him when he was present.

And it is to know that for such things for which a man deserveth death, there are two ways to bring him to answer the same; one by appeal, which is at the suit of the party, the other is by way of Indictment, which is at the king's suit, etc. And for a mayhem the party shall have an appeal of mayhem, wherein he shall recover damages, and no death shall follow, etc., and see the appeal following, and first of the appeal of the death of a man, etc.

An appeal of murder.

I H. *hic instanter appellat* W. F. *de morte* H. C. *fratris sui, pro eo quod cum predict.* H. *fuit in pace dei et dom. regis apud* D. *tali die, bora, et anno, ibi venit* W. F. *uti felo dom. regis, in assultu premeditat' vi et armis, etc. Et in ipsum* H. *adtunc et ibid. felonice insultum fecit, et cum quodam gladio precii* 12 *d. quem ipse in manu sua dextra adtunc et ibidem tenuit predict.* H. *super caput suum percussit et unam plagam mortalem in longitudine duorum pollicum in anteriori parte capitis sui usque ad cerebrum eidem* H. *adtunc et ibid. felonice dedit, de qua quidem plaga pred.* H. *per* 3 *dies hunc proxime sequentes languebat et tunc ibid. obiit; or immediate obiit. Et sic idem Iohannes ut felo dom. regis pred* H. *felonice interfecit et murdravit contra pacem dicti dom. regis, coronam et dignitatem suas, et quod hoc fecit nequiter et ut felo contra pacem dei et dom. regis, pred. Iohannes offert hoc disrationare prout curia dom. regis hic consideraverit, etc.*

And it seems the appeal of murder ought to be brought within the year and a day after the death of him who is murdered; and in an appeal the party hath two issues, to put himself upon the jury to try if he be guilty or not, or to wage battle, and to make the battle with the appellant; and if he do gage battle he ought

to design the battle in his proper person, and by no champion. But it is otherwise in a writ of right, etc.

And there are divers causes to oust the defendant in the appeal of battle, for it is said, that if an infant within age bringeth an appeal, and the defendant sheweth that he is within age, etc., the justices have been of opinion that he shall be put to answer the appeal of the appellant being within age, and the defendant hath lost the advantage to wage the battle, because it was his own act. And I conceive that if a woman bringeth an appeal of the death of her husband against another, the defendant shall lose the advantage of battle; for he cannot combat or derain battle with a woman, etc. And if a party be indicted of the felony or murder, etc., he shall not wage battle.

And see that in an appeal of the death of a man against two, the one as principal, and the other as accessary, and they waged battle, and the plaintiff demurred upon the plea, and it was said, that the accessary should not be put to answer till the principal was attainted or acquitted; yet it is said, that the accessary should answer presently, but the issue should not be tried till the principal were attainted or acquitted; and if the principal be acquitted the other issue should not be tried.

And I conceive that in every case of felony where a man is indicted as principal, and afterward hath his pardon, or forjureth the realm, that in those cases and

the like the accessary shall not be arraigned, because that when the principal's life is pardoned, in what manner soever it be, the felony is determined, and by consequence acquitted, and by the same reason the accessary is discharged. But *quære* what the law is if the principal have his clergy.

And see that where there are three brothers, and the middlemost killeth his eldest brother, the youngest brother shall have the appeal, and yet he is not his heir. The same law where the eldest brother killeth his father, the youngest shall have the appeal if there be but two brothers. And where the Wife killeth her husband, the heir shall have the appeal, as it is said. *Quære* what the law is in the cases before, etc.

And the process in an appeal of death is one *capias,* and one exigent, etc., but in an appeal of robbery, an appeal of rape and mayhem, the process is two *capias,* and one exigent, etc. And note that a man can never have an appeal of robbery, rape, or mayhem by descent, for the same shall never descend; but it is otherwise of murder.

And also note, that the appeal shall not abate, if in the declaration be the year, day, and other time when the felony was done, and it shall not abate for want of fresh suit, if it be not within the year and the day, and that is by the statute of *Gloucester, etc.*

In an appeal, if the defendant plead that the plaintiff is a bastard, and he is certified to be *mulier,* yet the de-

fendant shall be received to plead Not guilty, because at the beginning when he alleged bastardy, he might have pleaded over to the felony, because he demanded another trial, for the one is triable by the record, and the other by enquest. But of such matter which is triable by enquest, if he pleadeth to the felony, all the same shall be tried by one trial, and by one enquest. In an assize, if the tenant alledge bastardy in the plaintiff, and the bishop doth certify mulierty, yet the assize shall be taken to enquire of the seisin and disseisin; *quære.*

And *quære* if a man in an appeal plead a plea which is triable in another county, if he shall plead over to the felony, because he demandeth two trials.

Appeal of robbery.

THE writ of appeal of robbery beginneth thus:

A. B. *nuper de London generosus, attachiatus fuit ad respondendum,* R. F. *generoso simul cum* D. *nuper de* F. *in suburbiis London, de robberia et pace domini regis nunc fracta, unde eos appellat, et sunt plegii de prosequend.* A. B. *et* C. *et unde idem* R. *in propria persona sua instanter appellat pred.* C. A. *de eo quod ubi idem* R. *fuit in pace dei et domini regis nunc apud London, viz. in parochia sancti Dunstani in Fleet-street in suburbiis Londini,* or, *apud talem villam in tali comi-*

tatu, 20 *Octobris anno regni regis nunc* 17. *circa horam septimam post meridiem ejusdem diei venerunt tam pred.* W. I. *et* K. *qui modo non comparent, quam pred.* A. *qui modo comparet, felonice ut felones dom. regis nunc insidiando et insult' premeditat' contra pacem regis nunc coronam et dignitatem suas die, anno, hora parochia, et warda pred.* or *villa et com. predict. Et pred.* W. *unam galeam precii* 26 s. 8 d. *et unam crateram argenteam et deauratam precii* 40 s. *de bonis et catallis pred* R. *adtunc et ibid. invent. felonicè furatus est, cepit et asportavit. Et pred.* C. A. *et* I. K. *die, anno, parochia et warda pred.* or *villa et comitatu pred. felonice confortaverunt, sustentaverunt et auxiliaverunt pred.* W. *ad feloniam pred. informa pred. faciend' et perpetrand' ac eum tunc et ibidem ad feloniam illam factam, scientes eum feloniam illam sic fecisse, receptaverunt. Et quam cito idem felones felonias predictas in forma predicta fecissent, fugierunt, predictus* R. *eos recenter insecutus fuit de warda in wardam* (if the appeal be brought in London), or *de villa in villam,* (if it be brought in any county) *usque ad quatuor wardas propinquiores. Et ulterius quousque, et c. Et si predictus felo, qui modo comparet, feloniam predictam vult contradicere, predict.* R. *hoc paratus est verificare et versus cum probare prout curia, etc.*

And the like declaration is in burning of houses, and of burglary, *mutatis mutandis.*

And the defendant in this appeal shall have the same

trial as he shall have in the appeal before rehearsed, to put himself upon the issue triable by the enquest, or to wage battle if he pleaseth.

But there are certain things which shall put the same from that advantage, that he shall not wage battle, etc., *viz.* If the defendant be indicted of the same felony, etc., and if the plaintiff be mayhemed by the defendant, or by another as I conceive; or if the defendant be taken in the maner, or if the plaintiff be within age, or above the age of forty years, or if the plaintiff be a woman or the like.

And note that if the appeal of murder, robbery, or rape be brought in the King's Bench, and issue be taken before the justices of assize, if the plaintiff be non-suit, they have not power to arraign the defendant; but if the appeal be brought before them, and afterwards the plaintiff is non-suit, it is otherwise as it said.

And there is another difference when a man is arraigned at the king's suit, and when at the suit of the party; for if he be arraigned at the king's suit he shall be put to answer the felony, whether he be of that name or of another name; and it shall be no plea for him to say, that he is not of that surname, nor known by such a name, but by another name; for if a man killeth another and is indicted thereof, he shall answer to the felony, and shall not be admitted to plead misnomer; but if it be at the suit of the party it is otherwise; as if a man bring an appeal against another, there he shall

be admitted to have the plea, and that is the difference.

Note, that if a man bringeth an appeal of the death of a man, who hath lawful cause to have the appeal, and after declaration he is non-suit, the defendant shall be arraigned anew at the king's suit; but if the heir of the dead sueth the appeal, his wife being alive, and after declaration the heir is non-suit; the defendant shall not be arraigned a-new at the king's suit, because that none could sue the appeal but the wife, and so the declaration was without warrant. And *quære*, how that matter may appear to the court.

And if one be acquitted in appeal, or indictment wherein there is no error in the original; he shall be arraigned *de novo* at the king's suit, although that error be in the *capias* or exigent. But if error be in the original, and he is acquitted, he shall be arraigned *de novo* at the suit of the king, because that his arraignment was never warranted but without warrant; for when the king is ascertained of a felon, and of the day and year, if the felon be not lawfully acquitted of the same felony he shall be arraigned at the king's suit. But if he be once lawfully acquitted of the felony, he shall never put his life in hazard again for the same felony, if it be not for murder, in which case, it is said, that if a murderer be acquitted within the year at the king's suit, he may be afterwards in an appeal arraigned within the year at the suit of the party, etc.

And if an appeal of murder be brought before the

sheriff and coroner in the county, it is said, that it may be removed into the King's Bench by a writ, which shall be directed to the coroner, and not to the sheriff, because that the coroner hath the record; yet I think the law is otherwise.

And if one be indicted for murder, and afterwards an appeal is brought against him, and after declaration the plaintiff is non-suit, the appellee shall be arraigned at the king's suit upon the declaration, and not upon indictment, as it is holden in 4 *E.* 4.

Note, that it was said by some justices in times past, that in every case where the defendant pleadeth a matter, whereby he proveth that the action doth not lie for the plaintiff, as bastardy, or never accoupled in loyal matrimony, etc., there he need not to answer to the felony; but if he pleadeth a release in bar, then he ought to plead to the felony, because it is not denied by him that the action once lay for the plaintiff, for when he pleadeth to the felony, then he confesseth that the plaintiff is such a person who can maintain the action; yet it was said to the contrary, that he shall not plead to the felony *in favorem vitæ,* where otherwise if the plea were found against him, he should be attainted, and the felony not enquired of, and that seemeth to be both reason and law, etc.

And note, that when a man is found guilty for murder or felony, etc., for which he suffereth death, he may pray his book to save him if he be a clerk, and shall

have it if he can read. But if that bigamy at another time convicted, be alledged against him, and proved, then he shall not have his clergy.

And it was said, that if the ordinary refuseth a clerk generally, or specially, that the judge may compel him to accept the felon. But the old law was, that if the ordinary had refused him specially, as to say, *non habet vestem clericalem, non habet tonsuram;* yet the judge might compel him to accept of him. But if the ordinary do refuse him generally, the judge cannot compel him to accept of him, because there may be some cause wherefore the ordinary by the law of holy church ought not to receive him. But that opinion, as it was said, was altered in the time of *William Hussey,* and his reason was, that if this judge be his judge, where the ordinary refuseth him specially, it is as great reason that he shall be his judge where he refuseth him generally.

And see, that those who are so attainted of murder, or of other felonies, and for such things as they shall suffer death, they shall forfeit their lands and tenements, and their goods and chattels for ever, and the king shall have the lands for a year and a day, and then the lords of whom the lands are holden shall have them. But he who is attainted of treason, the king shall have all his lands, as well those which are holden of other lords as those which are holden of himself, etc. And if a man hath land in the right of his wife, and is

attainted of felony, the land shall be forfeited for the term of his life; and it was said, that if before the attainder, he and his wife were disseised, and afterwards he were attainted and restored to the king's peace; yet they could not have an assize. *Tamen quære.*

Appeal of rape.

NOTE also that the appeal of rape beginneth thus:

Robertus Wood *nuper de* A. *in comitatu Salop clericus, dict.* R. W. *nuper de* A. *in comitatu predict' capellanus rector ecclesiæ parochialis de* A. *in comitatu predict.* or thus; *nuper de* D. *in comitatu predict. gent. alias dict.* R. S. *nuper de* D. *in com. predicto yeoman attachiatus fuit per corpus suum ad respondendum Aliciæ* G. *de raptu ipsius Aliciæ, et pace dom. regis nunc fracta, unde eum appellat. Et sunt plegii de prosequend.* A. D. *de* C. *in comit.* C. *gentleman, et* E. I. *de* M. *in comitat.* C. *yeoman, etc. Et unde eadem Alicia in predict. persona sua instanter appellat predict.* R. W. *de eo quod ubi predict. Alicia fuit in pace dei et domini regis nunc apud* A. *predict. in comit. Salop,* 8 *die mensis Maii ann. regni dom. regis,* 17. *circà horam sextam post meridiem ejusdem diei, ibidem venit predict. S. felonicè ut felo predict. domini regis nunc insidiand. et insultu premeditato, contra pacem ejusdem dom. regis, coronam et dignitatem suas, die, anno, bora,*

et loco in comitatu predict. et in prefatam Aliciam adtunc et ibid, insultum fecit, et ipsam adtunc et ibid. de virginitate defloruit, contra voluntatem suam rapuit et carnaliter cognovit, et sic predict. R. S. *predict. Aliciam modo et forma predict' rapuit, et quam cito idem felo feloniam et raptum predict. fecissit, fugit, dictaq; Alicia ipsum recenter insecuta fuit de villa in villam usq; quatuor villas propinquiores, et ulterius quousq; etc. Et si idem felo feloniam et raptum predict. in forma predict. imposit' dedicere velit, predict. Alicia hoc parata est verificare et versuseum probare, prout curia, etc.*

And if a man sueth an appeal of the rape of his wife, although she be not his wife in right, but in possession, yet the appeal doth well lie as is said; otherwise it is in an appeal of murder brought by a woman of the death of her husband, for there it is a good plea, that they were never lawfully coupled in matrimony.

Appeal of mayhem.

See also that the appeal of mayhem is as followeth: *viz.*

I. N. *in propria persona sua hic instanter appellat* W. *de* F. *de eo quod cum idem, quære tali die et anno, fuit in pace dei, et dom. regis nunc, etc., apud talem villam in tali comitatu circa horam sextam, etc. Ibi venit predict.* W. *vi et armis, viz. baculis ut felo domini*

regis nunc insidiand. et ex insultu premeditat' adtunc et ibid. in dictum I. *insultum fecit et adtunc et ibid. eum quodam baculo precii, etc., quem predict.* W. *in manibus suis adtunc et ibid' tenuit, predict. querentem super brachium dextrum felonicè tunc percussit, per quod venæ et nervi brachii sui predict. restricti fuerunt annexi, et mortificat' devenerunt;* or, *cum quodamgladio, vel cultello precii, etc., quem defendens in manibus suis adtunc et ibid. tenuit manum dexteram, vel pollicem manus dexteræ, vel aliud membrum, vel auriculam, vel aliquam juncturam membri querentis felonicè amputavit, vel oculum suum evulsit, vel dentes suos anteriores fregit et deposuit, et sic idem defendens ut felo dom. regis predict. quer. adtunc et ibid. felonicè mayheymavit, çontra pacem dicti dom. regis, coronam et dignitatem suas. Et si defendens hoc velit dedicere, querens hoc paratus est versus eum probare, prout curia dom' regis de eo consideraverit, etc.*

And notwithstanding that the plaintiff declare in an appeal of mayhem, that the defendant hath mayhemed him feloniously, yet the defendant shall not suffer the punishment of death, but shall answer damages according to the greatness and grievousness, of the offence, etc. And if the plaintiff declareth in an appeal of mayhem, etc., and the defendant prayeth that it may be viewed if it be a mayhem or not, *quære,* if the justices say, that he is mayhemed, if it be peremptory to the defendant, so that he shall not be afterwards receiv-

able to plead Not guilty to it, or any other bar. And I conceive it is peremptory, etc. And in appeal of mayhem the plaintiff declared, that the defendant struck him upon the head, so that he had lost his hearing, and because the justices talked to him, and well perceived that he could hear they said, that the plaintiff should be fined, etc.

And see that if the defendant in an appeal of mayhem saith, that the plaintiff at another time brought an action of trespass against the same defendant, and sued forth the same mayhem, and recovered damages for the same, and sued execution, if the same be a good plea or not, etc. And it was said, that by an appeal of mayhem a man shall not lose his action of trespass, but contrary-wise, he shall not have an appeal after he hath once recovered in trespass for the same mayhem. *Quære* what the law is.

And in an appeal of mayhem against two, the plaintiff declared against one as principal, and against the other as accessary, and it was challenged because that all ought to have been principals, and the court said, it was in his election, so that the declaration one way or the other was good enough. And it was said by some, that it is no mayhem to cut off one's ear, whereby he loseth his hearing, etc., but the beating out of his teeth is a mayhem, because he may by them defend himself in battle. *Quære* if in the first case it be not a mayhem, etc.

Indictments.

THERE are also indictments upon which a man shall be arraigned, upon which if he be found guilty he shall be executed, etc., and first see indictments upon the view of the body taken before the coroner in the county.

Inquisitio indent' capta apud B. *in com.* N. 20 *die mensis Maii anno regni nunc regis Henrici octavi* 20. *coram I. W. uno coronatorum dom. regis nunc com. predict. et super visum corporis cujusdam* I. F. *ibid. jacent' interfect. per sacramentum* I. S. W. C., etc. *Qui dicunt super sacramentum suum, quod quidam* I. N. *de London gent.* 20 *die, etc., vi et armis, viz. gladiis, baculis et cultellis animo felonico et ex malitia precognitata in prefatum* I. F. *apud* B. *predict. insult. fecit et ipsum verberavit, vulneravit et male tractavit, ac dict.* I. F. *cum quodam cultello vocat' a wood knife precii* 12 *d. quem ipse in manibus suis adtunc tenuit, prefat.* I. F. *adtunc et ibid. usq; ad medium corporis sui felonice percussit atq; invasit in profunditatem decem pollic. dans ei plagam mortalem, de qua quidem plaga dict.* I. F. *infra unam horam tunc proxime sequent. adtunc et ibidem obiit, et sic predict.* I. N. *eundem* I. F. *adtunc et ibidem felonice interfecit et murdravit, contra pacem dom. regis, etc.*

And it was said, that the coroner hath not power to take any enquest of the death of a man, if not upon the

view of the body; and if he do it in other manner, all that he doth is void.

And it hath been used in times past, that the coroners might record the breaking of prison by the prisoners which are in them, and if the prisoners were in for felony they were put to execution without further answer; but *quære* if any such law be now in use.

And a coroner might take an appeal of an approver, of felony done in any county of *England,* and in the same manner he might make abjuration, if he confessed the felony to be done in another county than in the county where the coroner dwelt. And the reason was, because by that confession they shall be attainted. But he cannot so do in an appeal of robbery, if the felony be not done within the same county.

There are also divers indictments, as of robbery, burglary, and other felonies which are mentioned in sundry books, and the course of them is well known, because they are common, and in daily use and experience.

If a man be indicted that he feloniously cut down trees, etc., in such a place, and carried them away, the party shall not be arraigned upon such indictment, because it cannot be said to be felony.

A man was indicted for that he traiterously, etc., had made 100 *s.* of alchemy to the likeness of the king's money, and it was moved that the indictment was insufficient, because it was not put certain what money he made, groats or pence.

A man was indicted, that whereas another man was indicted of felony who was put into the stocks, etc., that he entered into the house without breaking of the same, and set him out of the stocks, and set him at liberty, and it was said, that it remained in the pleasure of the king, whether he should have perpetual imprisonment, or other pecuniary punishment according to the king's ordinance, but he shall not be hanged, etc.

And see that it was the use in times past, that the party should not be restored to his goods upon an indictment of robbery, unless it were found that he made fresh suit, if he were not appealed, yet that law is altered and changed, and the party shall be also restored to his goods where the felon is arraigned upon an indictment as well as upon an appeal, if the party giveth evidence against the felon at the time of his arraignment, and he shall not be put to circuit of action to sue his appeal, and it seemeth to be good law.

Note, that the writs are the principal and first thing in our law, whereby a man shall recover that which is wrongfully detained from him, and they are the foundation of every suit; and therefore look when a man beginneth his suit that the writ be good, else all which followeth will be nothing worth; which writs are ordained by law according as the matter is.

And there see first the writ of right and the nature of it, because it is a writ of a higher nature than any other writ can be; and the chief things and articles of

that writ are, the deforcement, the quantity of the tenements, in what town the tenements are, and that the demandant hath a lawful estate in fee by his own purchase, or of the seisin of his ancestor, or his own seisin, the taking of the explees and the seisin thereof, in the time of what king, and in the time of peace, and the tender of the demy mark a good discent, and in what manner he hath right, and the averment.

And note, that the explees ought to be of the demesne or of the services, and in a *precipe quod reddat* of the manner of explees in services, etc., and of the demesnes in sheep and corn, in pasture in feeding of cattle, of wood, in selling of the wood, gardens, in selling the apples, or grass, of villain, is in base service to his profit, and in seisin of those of his blood; and for a chaplain, or finding of poor men, the explees are alledged in masses and prayers, etc., and of a gorge in taking of the fish; of a mill, in taking of toll: and generally a man shall alledge explees according to the matter in demand and the nature of it.

And the trial in this writ of right may be two ways; the one by the grand assize, and the other by battle; but if the right be to be determined by the battle, it shall be done by champions, and not by the parties themselves, as it is said; and the reason is, that if any of the parties be killed, judgment of the land cannot be given against a dead person. *Quære* if that be the reason or not.

And it was said, that a man cannot have a writ of right of a rent, but only of a rent-service, for that other rents are against common right, etc.

And see that a writ of right doth differ from other writs in pleading, for in a writ of right, the tenant ought to conclude upon the right. To conclude, so that he hath more right to have the lands, etc., than the demandant, and not to conclude judgment of action, as the conclusion is in other writs, yet the same holdeth not in every case; for if the tenant in a writ of right plead a release collateral, etc., without warranty, there the tenant shall conclude judgment if action, and not otherwise as it seemeth; for the demandant hath more right to the land than the tenant hath, but by reason of the warranty the demandant shall be barred of his action.

And note, that in a writ of right upon the trial no attaint lieth; and yet in a writ of right of dower an attaint lieth, which is, a writ of right; but the reason is, because the trial thereof shall not be by the grand assize, nor by battle, but by a common jury, etc.

And note, that there are divers writs of right; a writ of right which is triable by battle, or by grand assize, as a writ of right of land, or a writ of customs and services, a *quod permittat* in the *debet,* writ of right of advowson, etc., and the like. And there are other writs of the possession mixt with the right, as a writ of

escheat, cessavit, rationable part, etc., and the like, but in those no battle nor grand assize lieth.

In a writ of customs and services, the effect thereof is the wrongful deforcement in not doing of the services which ought to be done to the demandant out of the land, and the land ought to be shewed, and how he holdeth by such services, and shew seisin in him or his ancestors of fee and right, and alledge the taking of explees, and the averment.

The articles and things which are material in the writs, appear in the writs themselves, and in the book of *novel tales,* and in other books, and therefore they need not be here mentioned, and for that cause I omit them here, etc.

An indictment upon the statute of 8 H. 6.

Jurator. præsent. pro Dom. rege, quod cum in statuto in parliamento Dom. nuper regis Henrici Angliæ sexti post conquestum apud Westm. anno regni sui 8. *tent. edit. inter cetera ordinatum sit quod si aliqua persona expulsa sit seu disseisita de aliquibus terris et tenementis modo forcibili, aut pacifice expulsa sit, et postea manu forti et armis extra teneatur contra justic. pacem vel post aliquem talem ingressum aliquod feoffamentum seu discontinuatio aliquo modo inde factum sit ad jus possessor. defraudend. aut tollend. quod pars in ea*

parte gravata habeat assissam novæ disseisinæ aut breve de transgressione versus hujus disseisitorem, et si pars gravata recuperaverit per assisam vel rationem transgr. et per veredictum alio modo per debitam legis formam sit compertum quod pars defendens in terras et tenem. vi ingressus fuit, aut ea per vim post ingressum tenuerit, querens recuperet versus defendentem damno sua ad triplicem, et ulterius finem faciet Dom. regi, et redemptionem prout in statuto pred. plenius continetur, etc., quidam tamen L. C. *de* E. *in com. pred. generosus simul cum quinq; personis juratoribus pred. ignotis statutum illud minime ponderans, die Dom.* 20 *die Januarii circa horam* 9 *post meridiem ejusdem diei anno regni Dom regis nunc* 12 *manu forti ac vi et armis, viz. baculis et cultellis in unum messuagium, unum gardinum ducentas acras terræ* 40, *etc., prati, et* 30 *acras bosci cum pertinen' quorundum* E. K. *armigeri et* L. M. *armigeri, etc.,scituat, jacen, et existen. in parochia de* L. *juxta T. in com. pred. ingressus fuit, et inde ipsos* E. K. *et* L. M. *vi et armis, viz. baculis et cultellis ac manu forti disseisivit. Et ejus inde statum et possessionem sic per disse sinam illam habitam et obtent. cum pred. personis ignotis usq; in crastinum diem sequentem, viz.* 13 *diem mensis Januarii continuavit. Quo quidem* 13 *die Januarii* H. L. *de* M. *in comitatu pred. yeoman,* W. B. *de pred husbandman, et* I. C. *nuper eisdem villa et comitatu laborer apud* L. *pred. in et super tent' ta pred. una cum prefato* T. C. *manu*

forti ac vi et armis, viz. bacultis, cultellis, gladiis, scutis, arcubus et sagittis se assemblaverunt, et eadem tenementa vi et armis pred. a pred. 12 *die Januarii hucusq; injuriis ipsius* T. C. *et ipsum* T. *pretensa tenuerunt et prefat.* E. K. *et* L. M., etc., *inde hucusq; extra tenent in dicti Dom. règis nunc contemptum ac contra formam statuti pred. et contra pacem dicti Dom regis, etc.*

When the parties are at issue in their actions the common trial thereof in our law is by verdict of 12 men, who shall be sworn upon the book to speak the truth according to their conscience. And sometimes the matter shall be tried by the bishop, and not by verdict of 12 men; as general bastardy alledged in any of the parties it shall be certified by the bishop, and in a *quare impedit* if the issue be joined upon the institution, it shall be tried by the bishop, for the same is in a manner a spiritual thing. But induction shall be tried by a jury, and also in a *quare impedit,* if issue be taken upon plenarty it shall be tried by the bishop; but whether the church be void or not void shall be tried by the jury. And if the parties be at issue in a *quare impedit* upon the ability of the person, whether he were sufficiently learned or not, it shall be tried by the bishop during the life of the clerk, but if the clerk be dead it shall be tried by the jury. And it is said, that if bastardy or other the like thing be alleged upon a thing

which is not but dilatory, it shall be remanded to the bishop to be tried, etc.

And a man in an action of debt brought against him upon a contract may wage his law, to swear upon a book that he oweth not the plaintiff the money which he demandeth, nor any penny thereof; and he ought to have with him 11 more to swear with him, that they believe in their conscience that he sayeth truth, and so he shall be discharged; but if the action be brought upon any specialty, or upon matter of record, or upon a thing touching land, etc., he shall not help himself in that manner, but shall put the same upon the trial of the jury, but he himself shall not be admitted to swear, etc.

And note, that an oath ought to have three companions, truth, justice, and judgment, and if they be wanting it is no oath, but a perjury; for if a man be forced by constraint to swear, that for many years he quietly held such lands, etc., it is perjury, not in him who sweareth, but in him who compelleth him to swear, *Reum non facit nisi mens sit rea. Nemo se circumveniat aut seducat. Qui per lapidem false jurat perjurus est. Quacunque arte verborum jurat aliquis, Deus ita accipit sicut ille qui jurat intelligit. Et minus malum est per Deum falsum jurare veraciter, quam per deum verum jurare fallaciter. Quanto enim id per quod juratur est magis sanctum, tanto magis est penale perjurium, etc.*

INDEX.

A.

PAGE

ABUSIONS of the Common Law..... 230–257
Accessaries, nine..... 56
Accords, final..... 180
Account..... 164
Acquittance..... 164
Action..... 71, 103, 191, 192
Afferment and afferrors..... 66
Alienations..... 27, 30
Amerciaments..... 225, 226
Appeals and Appealers 83, 85, 88, 90–97, 155–158, 309–321
Approvers..... 75, 152
Articles of the coroners enquest..... 54
,, in the leet..... 66
,, in Eyre..... 218
,, upon the stat. Marlbridge..... 267
,, upon the stat. Merton..... 265
,, upon the stat. West. I..... 269
,, upon the stat. West. II..... 275
Assize of novel disseisin..... 106
Attachments..... 81
Attaints..... 175, 176
Attornies..... 79, 111, 137

B.

Bail in appeals, &c..... 88
Barons of the Exchequer..... 62
Battle..... 166
Beau pleader..... 52

PAGE
Bigamy..... 143
Burglary..... 50, 57, 157
Burning and burners..... 40, 93, 155, 203

C.

Centuries and Centiners..... 20
Champion..... 196
Chancery..... 298
Charters, Deeds, &c..... 163
Cinque Ports..... 302
Circuits..... 77
Clergy..... 142
Clerks..... 142
Coin..... 37
Combat and Combaters..... 166, 169
Common Pleas..... 296
Constitutions of King Alfred..... 21
,, ,, Edward I..... 21
,, Ancient Kings..... 21
Contempts and Contumacies..... 91
Contract..... 118–122
Conusance..... 142
Copyholder and Copyholds..... 126, 165
Corn and Cattle to pay Toll..... 30
Coroners..... 52
Coroners to receive Appeals..... 24
Court Baron..... 304
Court of Marshalsea..... 292
Countors or Pleaders..... 79

D.

Defaults of Mag. Charta..... 257–264
Dilatory Pleas..... 141
Disseisins..... 106, 222
Distraining Goods forbidden..... 27
Distress and Distresses..... 109, 113, 157
Doomsday Book..... 127
Dower..... 27

E.

PAGE
Earl and Earldom 20, 25
Edward (King) his Ordinances..... 21
England divided into Counties, &c..... 19
English first coming into this Realm..... 18
Englishire Parent..... 61
Escape..... 87
Essoins and Essoiners..... 130–136
Estreats sent to the Exchequer..... 25
Exceptions..... 139–154
Exchequer, Court of..... 62
Eyre, Office of Justice in..... 24, 217

F.

Fairs and Markets..... 29
False Latin..... 145
Falsifying..... 37, 90
Felonies to be Tried by Appeal..... 26
Festival Days..... 146
Fines and Rewards..... 78
Forfeiture..... 58
Franchises..... 172, 221
Freemen to meet in Counties, &c..... 23
Free Tenants to Appear to Summons..... 26
Frank-pledge..... 66

G.

Gaol and Gaolers 86
Gloucester 283
Grand and petit assise..... 107

H.

Hamsockne..... 50, 96
Heresy..... 31, 99
Homage and Fealty..... 178, 179
Hue and Cry..... 25, 81
Hunting.. 174
Husband to hold the Wife's Inheritance 30

I.

PAGE
Imprisonment..... 96, 158
Indictments..... 98, 234, 322–330
Infamous Persons..... 201
Infants to be in Ward..... 27
Inferior Courts..... 63
Informers..... 79

J.

Judges and Judgments..... 74, 78, 144, 214, 277, 291
Judgment of Death..... 206, 211
Jurisdiction..... 22, 188
Justices in Eyre..... 217

K.

King, chosen..... 19
King's Courts to be open..... 25
King's Bench Court..... 293
Knight's Fees to the Eldest Son..... 26

L.

Larcenies..... 45–50, 95, 156
Law Divided..... 18
Lords of Fees may Summon Tenants..... 28

M.

Magna Charta, Defects in..... 257–264
Majesty (of)..... 30, 88, 202
Mainpernors..... 193
Mainprisors..... 85
Manslaughter..... 41
Marlbridge, Statute of..... 267
Marshalsea..... 292
Mayhem..... 97, 158–168, 319
Merchants..... 30, 287
Merton, Statute of..... 267
Misadventures..... 56

N.

PAGE
Misnomer..... 161
Murder..... 61, 93, 155, 204, 213, 309
Nativo habendo..... 124, 125, 137
Neisty..... 123
Ne injuste vexes..... 128

O.

Oaths..... 178, 191
Oath of Battle..... 169
Oath of Counters..... 80
Oath of the King..... 19
Obligations..... 175
Offences against the Peace..... 30
Offences, and the Division of them..... 30, 82
Offences, real and personal..... 98, 100
Offences venial..... 99
Office of Coroners..... 52–62, 83
Office of Justices in Eyre..... 228
Ordering of Battle..... 169
Ordinances of King Edward I..... 21
Ordinary..... 142
Original of the Law..... 17
Outlaws and Outlawry..... 159

P.

Parliaments..... 19
Peace, offences against the..... 17
Penancies..... 214
Perjury..... 33–38, 216
Persons above fourteen years to swear to the King..... 23
Personal Actions..... 191
Plaintiff..... 64, 92
Plaintiffs, who may be..... 75
,, who cannot be..... 75
,, how lawful men ought to complain..... 76
Pleader, pleas and pleadings..... 93, 137
Pledges..... 105, 193

PAGE

Poor..... 29
Power of the Judge..... 144
Prerogative..... 160
Presentments in Eyre..... 24
Principal and accessary..... 58
Prison and prisoners..... 43
Process in Appeals..... 85
Proof..... 29
Protection..... 160
Punishments..... 199, 213
Purprestures..... 173

R.

Rape two ways..... 51, 98, 157, 318
Receipt and Receiver..... 164
Replication..... 143–154
Replevin..... 109, 113
Reprehension Stat. *Gloucester*..... 285
,, of Circumspecte agatis..... 286
,, Stat. Marlbridge..... 267
,, Stat. Merton..... 265
,, Stat. West. I..... 269
,, Stat. West. II..... 275
Rewards or Fees..... 80
Robbery..... 50, 95, 156, 312

S.

Salary of Pleaders..... 80
Sanctuary..... 58, 59
Satisfaction of Debt..... 222
Saxons, conquerors of Britain..... 18
Seals..... 63
Sheriffs turns, &c..... 23, 65, 77
Slander..... 90
Sovereign Jurisdiction..... 22
Statute of Debt..... 287
,, Gloucester..... 285
,, Marlbridge..... 267

PAGE
Statute of Merton..... 267
,, Merchants..... 287
,, Westminster, 1st and 2nd..... 269
Stay of Judgment, causes for..... 211
Suit and Suitors..... 64
Summons and Summoners..... 26, 81, 128
Sureties..... 29

T.

Tenant by the curtesy..... 29
Treason..... 89, 91
Treasure trove..... 57, 173
Trespasses and wrongs..... 103
Trial..... 329
Trove..... 146

V.

Variance..... 152, 161
Venial trespasses, &c..... 103
View in Mayhem..... 158
View of frankpledge..... 66
Villenage and niesty..... 122

U.

Usury..... 174

W.

Wager of Law..... 163
Wages..... 78
Waive..... 123
Widow to marry with lord's consent..... 28
Wife may be endowed..... 28
Women not to bring Appeals..... 61
Wounds and wounding..... 57
Wrecks..... 57, 173

FINIS.

FORD UNIVEI I''